

Award No. 5093

Docket No. CL-5104

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: (a) Claim of the System Committee of the Brotherhood that Carrier violated the rules of the current agreement when on April 5, 1946, it established Position No. 154, titled Transit Clerk, at a rate of \$213.42 (now \$294.63) per month; and

(b) Claim that R. H. White, Jr., and/or all other occupants of Position No. 154, Transit Clerk, shall be paid the difference between \$213.42 (now \$294.63) per month and \$223.11 (now \$304.32) per month from April 5, 1946, until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Prior to April 5, 1946, there existed in the Freight Department of the Audit Office of this Carrier at Amarillo, Texas, Position No. 152 titled Transit Clerk, rate \$223.11 (now \$304.32) per month. The occupant of this position was unable, however, to handle the volume of work flowing to his position and such work as could reasonably be deferred was allowed to accumulate. By April 5, 1946, the work on this position had increased to the point where it was no longer possible for the incumbent to perform all of the necessary Transit Clerk duties, and as a result of this and the backlog of accumulated work it became necessary to increase the force by the addition of one Transit Clerk. Carrier accordingly created, on April 5, 1946, a new position, No. 154, titled Transit Clerk, but instead of establishing the rate of pay therefor in conformity with the rates of pay for positions of similar duties and responsibilities in the same seniority district, as required by the New Position Rule, they, instead, salvaged the rate of a former Transit Clerk position abolished about 1941 and added thereto the various increases occurring since that time.

Effective with the establishment of new Transit Clerk Position No. 154, the work assignment of Position No. 152 was rearranged and thereafter the occupant of Position No. 152 checked rates and divisions on traffic accorded transit operations on foreign lines and reshipped to both interstate and intrastate destinations, while the occupant of Position No. 154 checked rates and divisions on traffic accorded transit operations on Texas lines and reshipped to interstate and intrastate destinations. It will thus be apparent that Position No. 152 and Position No. 154 are not only similar but perform identical duties within their respective spheres.

office, and is therefore entitled to the same rate. The determination of this question will necessarily affect the disposition of the other controverted issues.

* * * * *

"It appears from the record that the single duty and responsibility imposed on the General Clerk which was the same duty regularly performed by the Assistant Timekeeper was that of posting time of train and engine men. Petitioner asserts Claimant spent 61% of his time posting time; Carrier concedes 50%.

"However, this does not make the two positions similar in duties and responsibilities because the Assistant Timekeeper had a number of other duties of greater responsibility. He was also required, in brief, to check train, engine and yard men's trip tickets against train sheets and yard work reports, and to compute mileage and overtime allowances and allowances earned under the rules of various working agreements, such as final terminal delay and the like. This required an up to date knowledge of the five working agreements covering enginemen, firemen, conductors, trainmen and yardmen, and the exercise of judgment and responsibility in applying the rules. (Emphasis supplied.)

"After computations are completed and the various amounts ascertained, the final figures are posted in the time books.

"The duty of posting is somewhat routine clerical work and not a duty either similar to computing allowances or of similar responsibility.

"This Board has no jurisdiction to establish a rate for the new position of General Clerk. Under the circumstances here that should be done by negotiation and agreement of the parties."

The above quotation is, if anything, even more applicable in the present dispute since the incumbents of the two positions do not actually perform identical work. It is true they both handle transit transactions but there is a distinct line of demarcation between the difficult and complicated matters handled by the incumbent of the Senior position and the simple matters handled by the incumbent of the Junior position. Other than this one phase of the assignments, the duties of the two positions are not even remotely similar. The assignment on the Junior position includes filing, posting, registering, tracing and other inconsequential work, none of which is included in the assignment of the Senior position. With the substantial difference in the importance of the duties assigned to the two positions, it follows that the responsibilities are likewise dissimilar.

Conclusions.

In conclusion, the Carrier asserts that the instant claim should be denied for the following reasons:

- (1) The instant claim is not in any manner supported by the governing rules of the current Clerks' Agreement.
- (2) In the absence of a position of a similar kind and class on the seniority district, the rate of pay established by the Carrier for the Junior position is proper and the Third Division, National Railroad Adjustment Board has no authority to establish a different rate.

(Exhibits not reproduced.)

OPINION OF BOARD: Notwithstanding their other differences, the parties finally come together on a joint statement that the only real issue before

the Board is whether or not the duties and responsibilities of Position 154 are similar to the duties and responsibilities of Position 152.

Thus, the dispute concerns a controverted question of fact involving application of the agreement, specifically Section 4, Article XI thereof, which reads as follows:

"The rates of pay for new positions shall be in conformity with rates of pay for positions of similar duties and responsibilities in the seniority district where created."

The question of fact to be resolved is whether the duties and responsibilities of Position 154 are similar to the duties and responsibilities of Position 152, within the meaning of the foregoing rule, thereby justifying a rate of pay for the occupant of Position 154 in conformity with Position 152.

In all but two awards coming to our attention where the Board has had under consideration rules governing establishment of rates of pay for new positions, the rule provided that wages for new positions should be in conformity with wages for positions of "similar kind and class" and not for "similar duties and responsibilities". Award 4965, a sustaining award, and Award 3505, wherein the Board dismissed the claim for want of jurisdiction, apply to the same parties and the same agreement.

In Award 4965, the Board was not called on to distinguish the language of the rule in that case from the language of the rule in controlling Award 4964. That the distinction may be more real than fancied is a deduction drawn from the results of Award 3505, wherein the Board looked to the duties and responsibilities of the position and not to the broad kind and class of work. Further there is a valid inference that where the parties have departed from standard language they have in mind something different by way of interpretation of their language.

Seemingly, duties and responsibilities emphasize job content of the position while kind and class of work is more general in scope and meaning and, under the latter, it would seem to follow that there would not have to be the marked similarity in the work which the former entails.

At this point it may be well to look more closely to the language of the rule. Giving to the words their common meaning and understanding the word "similar" is commonly understood to mean "like" or "much the same". The word is the derivative of the Latin word "similis" meaning "like". But a river and a brook in some ways are alike, so it would appear the word is used in the subject rule to mean "much the same". Such meaning becomes more clear when used in connection with the words, "duties" and "responsibilities". The word "duty" is commonly accepted to mean the things a person has to do in filling his position. "Responsibility" means that for which one is answerable or accountable. Thus, we have in a sense, a rule which provides that rates of pay for new positions shall be in conformity with rates of pay for other positions, where the things a person has to do in filling his position, and for which he is answerable and accountable, are much the same as the position with which compared.

The record in this case reveals as much dissimilarity as similarity in Position 154 and Position 152 when viewed in terms of job content. In the first instance it appears that the new position was created to take over the "routine detail clerical work incident to handling the correction accounts, and the audit of the less complicated transit corrections." This was done presumably to relieve the employe assigned to Position 152 of less responsible duties in order that he could keep the work, for which he was primarily answerable and accountable, up to date. It is further established by the record that the duties assigned to and performed by the employe in Position 154 were in line with the purpose for which the position was created.

While there is some evidence that to begin with the lines were not too closely drawn between the positions, this is explained by the uncontradicted

assertion in the record that the employes were not following instructions, and when it came to the Carrier's attention the two positions were brought into line. It is not necessary to draw on one's imagination, or to go outside the record, to hold that a new and inexperienced employe, going into a position for the first time, will be more involved in learning the duties of his position during the early period of orientation, than in performing the more complicated and responsible duties of the new position. Therefore, it cannot be correctly said that the new employe made any great contribution to performing the work of Position 152 before it was learned that the employes were working contrary to instructions.

There is some criticism of the Carrier for not being more objective in fixing the rate of pay for the new position. Such criticism loses sight of the proposition that there is usually no precise formula or "rule of thumb" for fixing rates of pay or measuring wage increases. The one confronted with the problem is usually left to his best judgment and the exercise of sound reason in probing for the solution. No less a personage than Senator Wayne Morse is authority for so holding while acting in the role of an arbitrator. One valid consideration was that the Carrier did undertake to evaluate the duties of the new position in terms of rates of pay for other positions on the property where, otherwise, gross inequities might have resulted.

Fortunately for the Board it is not charged with the duty and responsibility of fixing rates of pay. Its responsibility is only to interpret and apply the rules of agreement. The only authority conferred upon the Board by the subject rule is to review the action of the Carrier for gross error, a lack of sound judgment, or misapplication of the rule. Failing to find any the Board may not substitute its judgment for that inherent in management, properly exercised, but must leave to the parties, for negotiation and bargaining, any differences existing over the worth or value of the services performed or to be performed.

There appearing no basis for finding a violation of the rule in question, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the agreement as contended by the petitioner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of November, 1950.