

Award No. 5302
Docket No. CL-5115

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

1. Carrier violated its Agreements with the Brotherhood when during the month of April 1949 it unilaterally reduced a rate of pay established by Agreement of \$299.40 per month for position of First Demurrage Clerk, Local Freight Office, Denver, Colorado, to \$271.40.

2. The vacancy in the position that arose concurrently with the Carrier's unilateral action in reducing the rate of pay be rebulletined and that all occupants of the position since April 1949 be paid the difference between what they were paid at the \$271.40 per month rate and the \$299.40 per month rate including such adjustments as were subsequently made to conform with the 40-hour work week provisions established by Agreement effective September 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: (a) By the application of Agreement negotiated on September 3, 1947 by Conference Committees representing the 17 Cooperating Railway Labor Organizations and for the participating Carriers to which both the Union Pacific Railroad and the Brotherhood of Railway Clerks were parties, a rate of pay of \$299.40 was fixed for the position of First Demurrage Clerk in the Local Freight Agent's Office at Denver, Colorado then occupied by Mr. Arthur E. Lees.

(b) On April 10, 1948 formal notices were served on Carriers including the Union Pacific Railroad for the establishment of a 40-hour work week and a general increase in wages. The Employees' request was not composed in direct conferences with the Carrier Managements and it was ultimately processed to a conclusion under provisions of the Railway Labor Act that culminated in an Agreement signed at Chicago on March 19, 1949, by the authorized representatives of Carriers and Employees. The Union Pacific were parties through their authorized Conference Committee and the Employees (Brotherhood) through their Conference Committee, as the signatories to the March 19, 1949 Agreement denotes.

This Agreement of March 19, 1949 provided for, among other things, a general wage increase of seven cents per hour to be added to the then existing hourly rates of pay effective October 1, 1948.

of their request, many positions were placed within the agreement, and the positions which were formerly compensated on a basis of all services rendered were now to be compensated on an overtime basis. The rates of pay were reduced on numerous positions. However, in no case was the individual required to take a reduction in pay. He was guaranteed not less than his former monthly salary but if he earned more on an overtime basis he was to receive the greater amount.

In the instant case, the granting of this particular allowance enabled Mr. Lees to eliminate his loss somewhat and also resulted in another employee having the opportunity to increase his salary by taking the assistant cashier-clerk's position. Therefore, no employee was penalized or suffered because of the Carrier's action.

Irrespective of the temerity of the Organization's action, the Carrier has demonstrated conclusively that both from an equity standpoint and from the standpoint of the agreement rules, there is no basis for the claim presented by the Organization. The Carrier has also demonstrated conclusively that the proper rate of pay of the demurrage clerk position in question was \$271.40 in April 1949.

There is no merit to the Employees' claim and it should be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the proper rate of pay of a position for which the incumbent and the Carrier adopted a special rate.

Prior to July 1, 1942 there was one position of Demurrage Clerk at Denver Freight Station which had been occupied for many years by Lees. Due to increase of business effective July 1, 1942 a second Demurrage Clerk position was established at the same rate of pay.

In the late Autumn of 1943 both occupants vacated these positions. Lees bid off his position and was assigned to an Assistant Cashier position which paid \$28 per month more than the Demurrage Clerk position.

For the next few months the two Demurrage Clerk positions were filled by inexperienced men and the demurrage work fell seriously in arrears. The Carrier informed Lees of the situation and of the need for a qualified man. Upon the promise of a \$30 per month automobile allowance over and above the established rate of pay for the Demurrage Clerk position, Lees was induced to bid off his Assistant Cashier's position on February 2, 1944 and to take a Demurrage Clerk position which he occupied until April 22, 1949.

His \$30 automobile allowance was discontinued December 19, 1946, whereupon he protested upon the ground that the automobile allowance had been promised him by the Carrier to offset the difference in pay between the higher rated position of Assistant Cashier and the lower rated position of Demurrage Clerk. The Carrier then reinstated the automobile allowance upon an understanding that it would "automatically terminate when a position having a rate of pay equal to or greater than that of Assistant Cashier was available to Mr. Lees, irrespective of whether or not he made application for the position". Carbon copies of these two communications of the Carrier were mailed to the General Chairman and this, so far as the record is concerned, is the full extent of his knowledge of the whole transaction.

April 1, 1947 use of the automobile became no longer necessary and the \$30 automobile allowance was converted into "a straight money allowance" which had the effect of equalizing his pay with the rate of pay of the Assistant Cashier position.

April 22, 1949 Lees vacated the Demurrage Clerk position on which he was then receiving \$299.40 (\$271.40 plus \$28) and on bid was assigned to an Assistant Cashier position, the rate of pay of which was \$299.40.

Thereupon the Demurrage Clerk position vacated by Lees was bulletined at the rate of \$271.40. Apart from the position vacated by Lees, the rates of pay for other Demurrage Clerk positions at the Carrier's large freight stations then were:

Location	No. of Positions	Rate of Pay
Denver	1	\$271.40
Kansas City	1	271.40
Kansas City	1	267.40
Omaha	1	272.40
Omaha	1	267.40

The claim is for the \$28 difference from April 22, 1949 when the position was vacated by Lees and bulletined by the Carrier at \$271.40 instead of \$299.40.

FIRST. The rate of pay of the position in dispute was established in 1939, after joint analysis of its duties and responsibilities, by collective bargaining between the Organization and the Carrier. It is abundantly settled, by general rules in the Agreement and otherwise, that the rate of pay of a position, so established, cannot be changed except by further agreement between the Organization and the Carrier (Rules 58, 23, 26 and 27; Awards 522, 2602 and 5059; The Order of Railroad Telegraphers vs. Railway Express Agency, Inc., 321 U. S. 342; Railway Labor Act, Section 6).

No understanding or Agreement between the Carrier and an individual employe can change the rate of pay of the position; and regardless of what the incumbent of the position is actually paid or is willing to accept, or is forced to accept, the rate of pay established by collective bargaining is the rate of pay of the position for the purposes of the collective bargaining agreement. (Awards 522, 2602 and 5059.)

There is no evidence in this record that the Organization ever agreed to any change in the rate of pay of this position, except for the wage increases of a general character which successively increased the rate of the position from the \$144.20 agreed upon in 1939 to the \$271.40 bulletined in 1949.

The fact that the General Chairman knew about the automobile allowance, but nothing else about the transaction, did not amount to an agreement on the part of the Organization to change the rate of the position (Award 5059). This the Organization in effect admits but argues that, since Rule 24 requires "positions (not employes)" to be rated, the rate of the position was increased by the excess amount paid to the incumbent. If the rate paid to the incumbent had been reduced below the established rate of the position, it would scarcely be maintained that such a deviation from Rule 24 could set at naught Rules 58, 23, 26 and 27 and the authorities above cited. By the same token, if the arrangement with the incumbent to pay more than the established rate of the position did violate Rule 24, it is difficult to perceive how such action by the Carrier could unilaterally establish a new rate for the position (see Rules 27 and 11). To say that rating an employe (not the position) has the effect contended for is to say that the rate of the position becomes whatever the incumbent is paid notwithstanding the Organization is not consulted.

SECOND. If the work and responsibility of the position had increased when the incumbent was first paid the excess rate in 1944, Rule 38 would have required negotiation and agreement by the ranking officer of the Carrier and the General Chairman, just as agreement had been reached in 1939. There had been a marked increase in the volume of the work due to the war; but the Carrier had met this situation in 1942, not by putting the work on the established position, but by creating an additional position at the established rate of pay. Once the two positions were created to perform the work theretofore performed by one, it does not appear that the work

and responsibility of either position was thereafter increased beyond what was essentially bargained about in 1939. Moreover, both the rate upon which the increase of \$30 was placed in 1944 and the rate bulletined in 1949 were in line with the rates agreed upon and established at other large freight offices of the Carrier in Kansas City and Omaha.

It follows that the position was properly bulletined at the established rate of pay in 1949. And it also follows that the claimed "reduction" was not made for the purpose of defeating the wage increases resulting from the National 40-Hour Week Agreement (Award 4494).

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 Employees involved in this dispute are respectively Carrier and Employees 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 no Agreement was violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of April, 1951.