

Award No. 6538
Docket No. CL-6628

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
WESTERN WEIGHING AND INSPECTION BUREAU**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Bureau violated and has continued to violate the Clerks' Agreement when it failed and refused to properly rate Position No. 118, Livestock Relief Inspector, North Fort Worth, Texas as advertised by Bulletin No. 528, August 30, 1949, rate \$268.00 per month (present rate \$14.67 per day).

(b) The Bureau shall now compensate Mr. R. R. Rountree and all other employees who have been assigned to Position No. 118, Livestock Relief Inspector, North Fort Worth, Texas during the period from September 1, 1949 up until this condition is corrected.

EMPLOYEES' STATEMENT OF FACTS: On August 30, 1949 the Bureau issued Bulletin No. 528, for a new position which would relieve the regular assigned Livestock Inspectors at North Fort Worth, Texas (Employees' Exhibits Nos. 1 and 2).

The Livestock Relief Inspector, Position No. 118 was to relieve the following positions as listed showing the time of the relief and the rate of pay in effect September 1, 1949.

Position No.	Title	Assignment	Rate per Day
41	Asst. Agent	6 a.m. to 2 p.m. Sun.	\$15.62
43	Livestock Insp.	2 p.m. to 10 p.m. Mon. & Tues.	13.49
192	"	" 10 p.m. to 6 a.m. Wed. & Thurs.	12.55

Investigation was started as shown by Employees' Exhibit No. 3, and, as the Employees were unable to settle this dispute with the Supervisor in charge, it was necessary to file a claim, as shown by Employees' Exhibit No. 4.

The Employees' claim, covered by Employees' Exhibit No. 4, was forwarded to Manager Piehl for Handling as shown by Employees' Exhibit No. 5, which was followed by an exchange of letters up to and including Employees' Exhibit 17. There were in addition thereto conferences with Management in our endeavor to settle this dispute on the Bureau property. The last conference was in Chicago July 31, 1952 declining the Employees' claim.

man, yet no question was raised by him concerning the position covered by Bulletin No. 38. Following this, the position was again bulletined on September 28th by Bulletin No. 53—Employer's Exhibit No. 7—and it wasn't until he received a copy of Bulletin No. 53 that he raised the question with regard to the salary attached to that assignment. Why he waited for the length of time he did before questioning the rate of pay is something, of course, we do not know, but if he had reasons to believe that the rate for this position was not as it should have been he had ample time in which to protest it prior to October 13, 1950, however, for reasons best known to himself he failed to take any action until that time.

With regard to the basis of his claim, which as indicated in his letter of August 13, 1951—Employer's Exhibit No. 15—where he states—. . . among other rules 43 and 45 which sets out the basis of pay for new positions as well as protecting the rate applying to work that is already rated", we have stated that insofar as this claim is concerned neither Rule 43 or 45 have application. We again wish to reiterate that Rule 43 has to do with temporarily assigning an employee to some other position. This we did not do. Rule 45 provides that the wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. In our presentation of this case we have informed the members of your Honorable Board that there is no similar position in the Dallas Seniority District—that being the case, the Employees' claim that this rule has also been violated is without merit.

In view of the information contained herein we are confident that in your deliberation of this case you will hold as we do that rules of the Agreement in effect between the Bureau and The Brotherhood of Railway Clerks have been fully complied with and we earnestly urge that in your findings you will conclude there is no merit to this claim and that it therefore will be denied.

All data contained herein has been presented to the Employees.
(Exhibits not reproduced).

OPINION OF BOARD: As will be noticed from the respective statements of the parties hereto Claimant Rountree was holding the regularly assigned position No. 118 as a Relief Livestock inspector. In order to accommodate itself to the Government's requirement of the 40-hour week it became necessary to stagger the work of some of the employees, all of whom admittedly did the same kind of work of inspecting livestock but under differently rated positions as indicated in the bulletin.

The issue is well stated by Manager Piehl, of the respondent Bureau in his letter to the General Chairman of the Organization in which he says in part: "We cannot and do not subscribe to your thinking that simply because the occupant of Position No. 118, who is actually a Relief Livestock Inspector performs work on other positions in our Livestock Inspection Service when those employees are on their assigned rest days, that we should pay the relief employee the rate of the position on which he performs the relief."

The Bureau is under the impression that the problem was solved in the written Agreement of August 24, 1949, but the Organization specifically denies that and says that discussion as to the rates of pay did not arise until after that, and the record supports that position, so we think the issue on the "rates of pay" is before us.

The rules relied on by Claimant, as indicated in his statement are 42, 43 and 45.

We find:

1. The bulletin on Position No. 118 rated it within the meaning of Rule 42.

2. Rountree is "temporarily" assigned to higher rated position on those days when he relieves on jobs 41, 43 and 192 under Rule 43 (a) and is entitled to "receive higher rates while occupying such positions."

3. This was a new position under Rule 45 or else it would seem there was no occasion for bulletining it. There is a difference of opinion about the necessity for bulletining the position, but the fact remains it was bulletined. Bureau says it was inadvertent. Employees cannot be charged with that.

Bureau says this case is controlled by Award 5920. We do not agree with that, but assuming it is, it is interesting to note in that Award that the Carrier admits that "Claimant was paid the rate of the position he relieved". Is it fair for the Bureau to say, we will pay when the position relieved pays a lower rate, but not when the position relieved pay a higher rate? It can of course be argued that "what is sauce for the goose is sauce for the gander" because the employees get preferential treatment in that regard, but the answer is that the employees were able to have their position made part of the working Agreement as appears in the last clause of Rule 43 (a).

In addition it may be noted that the claim in Award 5920 was sustained.

As it is not unusual in these cases there are some inconsistencies in this record which are impossible of resolution, but on the whole record we are of the opinion the Claimant has made out his case and the claim should be sustained.

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 the Bureau violated its Agreement.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.