

Award No. 6636

Docket No. CL-6472

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

**MISSOURI PACIFIC RAILROAD COMPANY
GUY A. THOMPSON, Trustee**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When effective Wednesday, January 9, 1952, it reclassified the position of General Clerk at Benton, Arkansas, rate \$14.18 per day, to a new classification of Assistant Cashier, rate \$14.36 per day and concurrently removed the clerical work theretofore assigned to the Cashier at Benton, rate \$14.48 per day, consisting of rating less carload and carload freight and figuring the extension on the way-bills from the Cashier position and assigned said work to the so-called Assistant Cashier at a lesser rate than is applicable to rate work on the Arkansas Division, in violation of the provisions of Rule 31 (a) and (b) of the Clerks' Agreement and failed and refused and continued to refuse to apply the proper rate of \$14.48 per day on the position;

2. That the reclassified position be properly designated as Rate Clerk instead of the improper designation Assistant Cashier;

3. The occupant or occupants of the so-called Assistant Cashier position shall be paid the difference in the rate of \$14.36 per day established and the proper rate of \$14.48 per day applicable to this work, amount 12c per day, for each day retroactive to January 9, 1952, until the dispute is disposed of and the claims satisfied.

EMPLOYES' STATEMENT OF FACTS: Benton, Arkansas is a station on the Arkansas Division, approximately twenty-three miles south of Little Rock, at which station for some time prior to January 9, 1952, the Carrier employed and maintained a station clerical force, subject to the scope and operation of the Clerks' Agreement, consisting of:

Position	Rate	Assigned Hours	Rest Days
Cashier	\$14.48	8:00 AM-12:30 PM; 1:30 PM-5:00 PM	Sat. & Sun.
General Clerk	14.18	1:30 PM-5:30 PM; 6:30 PM-10:30 PM	Sun. & Mon.
Yard Clerk	13.28	2:45 AM-7:15 AM; 8:15 AM-11:45 AM	Thurs. & Fri.

assign 8 hours of higher-rated work in allotments of three, three and two hours to three lower-rated positions and thus procure the higher-rated work at a lower rate of pay. As a matter of fact there would be just as much occasion for the Carrier to express apprehension that if the Employees' contentions in this case should prevail the assignment of any quantity of higher-rated work to a lower-rated position would require payment for lower-rated work at a higher rate of pay. We think this is a rule that should work both ways if there is to be any departure from the actual wording of the Agreement, and it suggests a common ground upon which to settle the issue is preponderance. Since we do not set up composite rates for composite service of the kind here involved we are of the opinion that if there is in excess of half the time spent on one type of work the rate for the 8 hours should be the rate for that type of work. In other words, if there is as much as four hours of Cashier work at a station there should be one Cashier position; if as much as 12 hours of such work there should be two such positions. But we do not see any equity or Agreement requirement for two Cashier positions when there are only 9 hours of Cashier work.

To summarize, the Carrier holds that because there was no analogous position on the seniority district and no comparable position on other seniority districts, there was no violation of the Agreement in establishing a rate of \$14.36 for this Assistant Cashier position and that a good faith effort was made to establish a rate that provided adequate compensation for the work assigned notwithstanding there was no actual Agreement requirement to apply a higher rate beyond the actual time the claimant is engaged in what is contended to be higher-rated work.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the proper rate of pay under Rule 31 (a) and (b) for a new position created upon discontinuance of an established position.

At Benton, Arkansas, prior to January 9, 1952, the force consisted of the following positions:

Position	Hours	Rate	Rest Days
Agent		\$424.75 per mo.	
Telegrapher		1.84 per hr.	
Cashier	8:00 AM - 5:00 PM	14.48 per day	Sat. & Sun.
General Clerk	1:30 PM - 10:30 PM	14.18 per day	Sun. & Mon.
Yard Clerk	2:45 AM - 11:45 AM	13.28 per day	Thur. & Fri.

A regularly assigned Relief Clerk position relieved the two Clerks on the assigned rest days. The Cashier position was a 5-day position. The duties of the Cashier and the General Clerk positions are described in the submissions.

Effective January 9, 1952, the position of General Clerk was abolished and in lieu thereof a new position was established:

Position	Hours	Rate	Rest Days
Ass't. Cashier	12:30 PM - 9:30 PM	\$14.36 per day	Sun. & Mon.

The duties of this new position were the same as those of the General Clerk with two additions:

1. Rate bills of lading and make extensions thereon
2. Post switching statement

These two items of work were part of the work formerly assigned to the Cashier position. They were transferred to the Assistant Cashier in order to relieve the Cashier of work which he was unable to accomplish within his assigned hours.

The Organization asserts that the rate clerk work performed by the Assistant Cashier consumes two or three hours per day and the Carrier asserts 30 minutes on Tuesdays, Wednesdays and Thursdays, one hour on Fridays and three hours on Saturdays.

There are no Rate Clerk positions on this seniority district; and the lowest rate paid to a Rate Clerk on any other seniority district shown is \$14.48. There are six clerical positions shown (Chief Revising Clerk, Revising Clerk, Chief Clerk (3) and Station Accountant), the occupants of which are required to perform rate clerk work. None of these positions pays less than \$14.78. There is one Cashier position shown on this seniority district at Gurdon, the occupant of which is required to perform rate clerk work, and this position pays \$14.48.

There are only two Assistant Cashier positions shown: one on this seniority district at Little Rock which pays \$14.78 in relation to a Cashier position which pays \$16.58; and another on another seniority district at Alexandria which pays \$14.36 in relation to a Cashier position which pays \$15.02. The Assistant Cashier at Alexandria assists the Cashier and performs no rate clerk work.

Rule 31 (a) and (b) provide:

"(a) The rates of pay of new positions will be in conformity with wages for analogous positions of similar kind and class in the seniority district where created; if no existing position in the seniority district, then the rate of pay for the new position will be established with due regard to the rates attaching to comparable positions on other seniority districts.

(b) Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

First. Although the new position bears the title of Assistant Cashier, none of the normal or usual duties of a Cashier was assigned to the new position; and most of the rate clerk work apparently always has been, and still is, performed after the Cashier's assigned hours or on the Cashier's Saturdays off.

In substance, all the Carrier did here was to transfer rate clerk work from the Cashier position to the General Clerk position and to give the General Clerk position a new title which, for our purposes, is a misnomer (see Award 4895).

By reason of Rule 31 (b) the Carrier could not properly discontinue the General Clerk position and give it a spurious new title for the purpose of evading a proper application of Rule 31 (a). For the purpose of making the comparisons required by Rule 31 (a), therefore, this Assistant Cashier position should be viewed and considered as a General Clerk position with rate clerk duties.

Second. In this view neither party is able to point to an "analogous position of similar kind and class" in any seniority district.

The Cashier position at Gurdon may be an analogous position of similar kind in the sense that it combines Cashier's work with rate clerk work, but it is not an analogous position of similar class. The same is true of the six

clerical positions all of which perform rate clerk work but are of a higher rated class.

The Assistant Cashier position at Alexandria does not appear to be an analogous position of either similar kind or similar class because it is restricted to Cashier's work and includes no rate clerk work.

In this posture of the record we have no authority to adopt the rate proposed by the Organization because it cannot meet the requirements of Rule 31 (a).

On the other hand, in changing the title of the position and in fixing the rate in the manner that it did, the Carrier did not meet the requirements of Rule 31 (a) and (b) (Award 3555).

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 there was a violation of the Agreement to the extent shown by the foregoing Opinion.

AWARD

Claim 1. Sustained except as to the proper rate of pay;

Claim 2. Denied;

Claim 3. Remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1954.