

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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

(a) The agreement governing hours of service and working conditions between Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated at the Sacramento, California Agency through Carrier's failure and refusal to properly rate positions of Driver; and

(b) Carrier shall now be required to rate the positions at \$261.00 basic per month, and compensate all employees adversely affected for the difference between what they were actually paid and what they should have been paid, retroactive to and including January 12, 1951.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 12, 1951, there were six positions titled Driver at the Sacramento, California Agency, Group 30, positions 2, 3, 4, 5, 7 and 8 with assigned duties as follows:

Group 30, position 2—

"Driving truck in pickup and delivery service." (Exhibit "A".)

Group 30, position 3—

"Driving truck in pickup and delivery service." (Exhibit "B".)

Group 30, position 4—

"Driving truck in pickup and delivery service; receipting to shippers; receipts for collective charges on delivery when required and the rendition of required current daily reports." (Exhibit "C".)

Group 30, position 5—

"Pickup and delivery service. Bank and jewelry shipments. Money and jewelry over \$500.00 any address." (Exhibit "D".)

The rules relied upon by employees do not support their demand for an increase in the rate of pay of these positions. There is no rule which requires an increase in the rate of pay of long established positions, such as we have here. The Board has repeatedly recognized that it may only construe agreements but not make them. In the absence of a rule, it must leave to the parties the negotiation of a proper rate. In Award 2218, the Board held:

"As we understand our powers, we can only fix rates of pay where the interpretation of a rule applicable thereto is involved, the alleged violation of which creates a cause for dispute. Where there is no rule governing a case, the rate of pay is a question for negotiation, and we are not permitted to fix a rate, even though equitable considerations might prompt us to do so."

Later, in the handling of the dispute on the property, Local Chairman McClure on February 19, 1951, called attention to certain bulletins issued on February 9, 1951, covering positions 1, 2, 3, 4, 5 and 6 in Driver Group 30, in which the language "assessing and collecting charges on prepaid forwarded" was made part of the description of duties on the bulletin. This language did not constitute a change in the duties of Driver, nor the addition of higher rated work to those positions, but was merely descriptive of their duties in line with existing instructions and practices.

The practice of assessing and collecting charges on prepaid forwarded traffic picked up in residential districts by Drivers at Sacramento was in effect early in 1937, since which time Drivers have been furnished with scales, classifications, tariffs, etc., enabling them to assess and collect charges at time of pickup in order to avoid having to return to the same address a day or two later for the collection of charges.

The instructions of June 13, 1950, and January 12, 1951, were a reminder to these employees that they were expected to avail themselves of the facilities in their possession for the purpose described in the instructions. Attempts to secure the fullest cooperation in this regard having failed, the positions enumerated were re-bulletined on February 9, 1951, including the requirement quoted. Certainly that language did not constitute a change in duties, nor the addition of higher rated work, since it was simply descriptive of the duties then being required. Neither does the requirement now appearing on the bulletins suffice as a basis for the demand for a higher rate of pay. As held by the Board in the numerous Awards cited by Carrier, the only authority conferred upon the Board is to review the action of the Carrier for gross error, a lack of sound judgment, or misapplication of the rules. 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. Employees having failed to support their contention that the Agreement effective September 1, 1949, was violated through failure and refusal of the Carrier to increase the basic rate of pay of Drivers at Sacramento, the claim should be denied.

All evidence and data set forth have been considered by the parties in correspondence and conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 82 (a) and (b) is controlling here. It reads as follows:

"New Positions—The wages for new positions as created shall be in conformity with the wages for positions of similar kind or class:

(a) At the agency where created if there is a position of similar kind or class;

(b) If there is no similar position at the agency, then the rate paid for similar positions at other similar offices within the Superintendent's Division";

Claim here is made in behalf of all affected employees account of alleged failure of the Respondent to properly rate and compensate employees classified as Driver at Sacramento, California, within the meaning of the above rule.

Petitioners assert that six old positions of Driver at this Agency were abolished with six "new positions" being bulletined, said new positions having new duties and added responsibilities, namely the assessing and collecting of charges upon receipt of shipment from customer. It is further contended that these added duties, which had only been performed on a discretionary basis by the occupants of the abolished Driver positions, were nonetheless of a nature that was not "required" of any Driver at the Sacramento Agency, thus requiring the rating of such new positions as provided in paragraph (b) of Rule 82. The Organization took the position that in this instance there was a position comparable to that of the newly bulletined position within the Superintendent's Division, namely that of Clerk-Driver, San Jose, California, rate \$261.00, which could and should be applied to the "new positions" in question.

The position of the Respondent has two facets:

(1) That no new positions have been created in the instant case but merely the republication or rebulletining of the duties of existing position of Driver, that is, assessing and collecting of charges "upon receipt of shipment" from a customer;

(2) That even if it were determined that the Respondent's actions in the premises constituted and resulted in establishing new positions, as such, within the meaning of Rule 82, the correct rate (\$256.93) had been placed upon the positions in question, since there were comparable positions (with the same rate) at the Sacramento Agency.

The Respondent's contention that the six Driver positions with which we here concern ourselves were not new positions is without merit. There were ten Driver positions at Sacramento. A Notice was issued to the effect that six of these positions were abolished. Such positions ceased to exist at that moment. Any later bulletins advertising Driver positions were of necessity directed at and concerned new positions. It is not logical to assume or conclude otherwise.

Having determined that the positions so bulletined were new positions, the question remains whether paragraph (a) or (b) of Rule 82 covers and/or is applicable to the present situation.

Only if there are no comparable positions at the Agency (paragraph (a)) is it permissible to consider other agencies within the Superintendent's District (paragraph (b)) under Rule 82.

Prior to the time in question ten Driver positions existed. Six of the old positions were abolished and four remained. Of the four positions so remaining, it appears to the Board that at least one had comparable duties to the positions so created, likewise with a rate (\$256.93) identical with that established for the position so created. The requirement that the Drivers assess and collect charges when shipment was accepted does not constitute sufficient differentiation from the existing Driver position to find and hold that the positions in question are not of a similar kind or class within the meaning of Rule 82 (a).

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 Employes involved in this dispute are respectively Carrier and Employes 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 effective agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of November, 1955.