

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the rules of the Clerks' Agreement by its failure and refusal to properly adjust the rate of pay for the position of Chief Clerk in the Signal Engineer's Office when the Signal Department became a reporting division, effective January 1, 1948.

(b) A rate of \$440.00 per month be established for the position of Chief Clerk to the Signal Engineer located in the San Francisco General Offices effective January 1, 1948.

EMPLOYES' STATEMENT OF FACTS: The facts in this claim are as follows: The position of Chief Clerk to the Signal Engineer was created in the latter part of 1928, as a Rule 2 position in Seniority District 18, and was given the same rate as that paid the Assistant Accountant in the Superintendent's Office at Sacramento. The Signal Department at that time had supervision over the signal work on the entire railroad, but the office force consisted solely of the Chief Clerk, which position was included in the Western Division. The Signal Department's maintenance work was reported through the Division office of either the Eastern Division (Seniority District 19) or the Western Division (Seniority District 18), as the case warranted, and construction work was reported through the Engineering Department (Seniority District 8). The Signal Engineer's Office dealt directly with any other department where anything in connection with signal work was involved, such as the Store Department (Seniority District 14), Purchasing Department (Seniority District 7), Mechanical Department (Seniority Dist. 13), Telegraph Department (Seniority District 5), and the various departments in the General Office. It was the duty of the Chief Clerk to handle routine departmental practices and policies in connection with men in the field, and be able to correctly interpret and execute instructions received by the department from those in authority, including knowledge of rules of the Interstate Commerce Commission and the State Railroad Commission governing the reporting of signal inspections and failures.

The rate of pay of the Chief Clerk to the Signal Engineer remained on a daily basis equivalent to that paid the Assistant Accountant at the Super-

the Chairman would place the Chief Clerk, Signal Department, on a basis of pay equal to that of Chief Clerk in the Chief Engineer's Office. All these factors and many others which are elements of a wage rate have been considered by the Carrier during negotiation of this demand; and, in Carrier's opinion, the differences between the two jobs are so significant as to preclude agreeing with the Organization that the Signal Department position should carry a rate equal to that of the Chief Clerk, Western Division.

Carrier, in support of its contention that this demand is a negotiable matter not falling within the scope of your Board's jurisdiction, desires to call the Board's attention to Third Division Award No. 3484, Docket No. CL-3435 (Referee J. M. Douglas) involving a similar claim and the same two parties as are now before this Board. In the Opinion of the Board it was stated as follows:

"It is not within the jurisdiction of the Board to establish new wage rates. Under the circumstances here, that should be done by negotiation and agreement of the parties.

"For want of jurisdiction this claim must be dismissed. See Awards 2682, 3373."

PART II.

RULE 10 HAS NO APPLICATION

Carrier has already shown in its Statement of Facts that the position of Chief Clerk, Signal Department, has been in existence since January 1, 1929 and that claimant, the present occupant of the position, has occupied said position since February 4, 1938. Thus, in 1948 when the Signal Department became a separate reporting unit, the position of Chief Clerk had been in existence for nineteen years, and claimant had held the position for ten of those years. Therefore, it is obvious that, regardless of whether or not additional duties were added to the Chief Clerk's position as a result of the 1948 transfer of accounting functions reporting, **no new position was created** and consequently Rule 10 has no application whatsoever in this situation.

In summary Carrier restates its position as follows:

(1) The instant claim is a negotiable matter outside the jurisdiction of the National Railroad Adjustment Board and should be dismissed; and

(2) There has been no violation of Clerks' Rule 10 because said Rule has no application under the facts of this case.

All of the above has been presented to the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: It is here alleged that the Carrier violated rules of the effective agreement when an adjustment in the rate of pay was not made effective for the position of Chief Clerk to the Signal Engineer. Request is here made that a monthly rate be established for this position, General Offices, San Francisco, California, which is equal to the monthly rate for other Chief Clerk positions in the same Seniority District; effective January 1, 1948.

Reference in the Record is made to Rules 5, 7, and 10. They provide as follows:

"Rule 5. Title of Positions. Proper designation and classification of the duties and work assigned each position are necessary and shall be adhered to.

"The General Chairman shall be notified in writing of any substantial change in the assigned duties."

"Rule 7. Adjustment of Rates. When there is sufficient increase or decrease in the duties and responsibilities of a position or change in the character of service required, the compensation for that position will be properly negotiated with the duly accredited representatives, but established positions shall not be discontinued and new ones created under the same or different titles covering relatively the same class of work for the purpose or with the effect of reducing the rate of pay or evading the application of these rules."

"Rule 10. Wages of New Positions. 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."

The parties are in agreement on essential facts of record. Some time prior to January 1, 1948, a substantial amount of Traffic Control installation work was commenced by the Carrier. Likewise, prior to this date, all Signal Department accounting was reported to the General Accounting Department through reports from the Eastern and Western Divisions of the Carrier. These reports were prepared under the Chief Clerk to the Superintendent of these Divisions. On January 1, 1948, the Signal Department was established as a separate, independent, reporting division with these reports prepared by the Signal Department under the general supervision of the Chief Clerk in the Signal Engineer's office.

The occupant of the Chief Clerk position, in the Signal Engineer's office, individually, and later the Organization in his behalf, requested the company to adjust the rate for this position upward to the monthly rate of the Chief Clerk, Superintendent's Office, of both the Eastern and Western Divisions, on the grounds that the added duties and responsibilities assumed by the position made such positions comparable in all particulars. Through negotiations the monthly rate was adjusted upward, but without prejudice to the Organization's right to seek a further increase in the rates, said request forming the basis of the confronting dispute.

The Organization contends that the setting up of a separate Reporting Division under the supervision of the Chief Clerk, Signal Engineer, had the effect of upgrading the nature of this position to an equal plane with other Chief Clerk positions in the same Seniority District. It was contended that this was brought about by the increased number of employees under the direct supervision of this position together with the added duties and responsibilities assumed thereby.

The Respondent asserts that there was no violation of Rule 5, nor was there a violation of Rules 7 or 10. It was asserted that the change of assignment or functions relative to Signal Department accounting added no duties to the Chief Clerk position hereof, since such added duties were performed by others under his supervision, and in no way resulted in changing the nature or character of the position. It was contended that the position of Chief Clerk in the Superintendent's Office required the possession of knowledge and experience above and beyond that of Chief Clerk, Signal Engineer, which justified a higher rate for such position. It was further pointed out that the increased duties of the Chief Clerk, Signal Engineer, had been recognized by three general increases in the basic rate, and that such position not being a new one within the meaning of Rule 10, the rate to be applied was subject to negotiation between the parties.

With the creation of a separate Reporting Division in the Signal Engineer's office to handle all phases of accounting for such office, the Chief Clerk of such office assumed assigned duties which changed to a substantial degree the character of such position. Rule 5 makes it incumbent upon the Carrier to notify the General Chairman, in writing, of such facts. This was

not done and while such failure amounted to a technical violation of the Agreement, it, in itself, will not warrant a finding that this claim should be sustained.

Thus we proceed to an examination of the other rules of the Agreement which were relied upon and discussed by the parties in the record. Rule 7, adjustment of rates has to do with:

“... sufficient increase or decrease in the duties and responsibilities of a position or change in the character of service required. . . .”

We cannot agree with the Respondent that there had been no change in the duties of this position. Certainly the supervision of the added Employees necessary to staff the accounting functions constituted added duties to the position. Likewise, supervision of, and the final responsibility for the accuracy of, such work constituted added responsibilities to the position that had not heretofore been present. Also the combination of such added duties, with the resultant increased responsibility, amounted to a change in the character of the service required; for, as the Board stated in Award 4525, involving the parties hereto:

“Obviously, however, the continued addition of this type of work can reach a point where it brings about a **sufficient** change in the regular assigned duties and responsibilities or in character of service to warrant an upward adjustment. Certainly, the addition of numerous extensions to a switchboard brings about a point where its operation calls for a skilled operator, just as the addition of numerous accounts to a bookkeeping system eventually brings about the need for the service of a skilled accountant, whereas formerly an ordinary bookkeeper was all that was needed. Basically, the work is the same but the increased volume brings about complications where the more highly skilled help is required and consequently the position commands a higher rate. When in this case the additional work of handling the duties in connection with the operation of the Allentown-Reading Company was added to the Ticket Clerk positions, that, coupled with the addition of the same type of work in connection with the operation of the Murphy Line, in our opinion, constituted a **sufficient** change in the regular assigned duties and responsibilities of the positions or in the character of the services required as to warrant an upward adjustment in the rate . . .”

is likewise applicable here.

Thus, we proceed to the propriety of the Organization's assertion that the rate of this position should be comparable to the Chief Clerk, Superintendent's Office, which is in the same seniority district. It is uncontroverted that both the Eastern and Western Divisions were separate reporting divisions, or that the duties and responsibility for the Accounting work performance rested with the Chief Clerk, Superintendent's Office, of these Divisions. Undoubtedly, these duties and responsibilities were component factors of both the job classification and rate of such positions. When they were in part transferred to the Chief Clerk, Signal Engineer's office, they, likewise, became an integral part of this Chief Clerk position and each Chief Clerk's position became a position of similar kind and class in the same seniority district, within the meaning of the Rule, and entitled to the same rate of the other Chief Clerk positions.

The record also reveals that the parties have, by mutual agreement, recognized the similarity and inter-dependency of various other positions within the Superintendent's Office and the Signal Engineer's Office as evidenced by the conformity in rates for the positions of Accountant, File Clerk, and Stenographer at the said points.

We can find no valid reason for any variance here.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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 Carrier violated the effective Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1957.

DISSENT TO AWARD NO. 7623, DOCKET NO. CL-7408

Here, the controlling rule—Rule 7—expressly provides in respect to an adjustment which serves to change a rate of pay that “the compensation for that position will be properly negotiated with the duly accredited representatives” and this rule is not otherwise or elsewhere modified. The Board has here transgressed its authority to fix a rate of pay contrary to its powers under the Railway Labor Act and in plain contravention of specific terms of the controlling rule.

We dissent.

/s/ J. E. Kemp
/s/ W. H. Castle
/s/ R. M. Butler
/s/ C. P. Dugan
/s/ J. F. Mullen