

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 DETROIT AND TOLEDO SHORE LINE
RAILROAD COMPANY**

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

(1) Position Desk No. 19, established in the Auditor's Office, Toledo, Ohio, on January 3, 1951, was improperly rated and shall now be properly rated at not less than \$12.85 per day (plus general wage increases subsequent to said date), advertised and assigned in accordance with the terms of the agreement; and

(2) All employees adversely affected shall be compensated for all wage loss sustained, retroactive to January 3, 1951.

EMPLOYEES' STATEMENT OF FACTS: On January 3, 1951, the Carrier issued Bulletin No. 143 (see Employees' Exhibit "A") establishing the position known as Desk 19 in the Auditor's Office at Toledo, Ohio, in seniority district No. 2. Subsequent investigation developed that the rate of pay of this position was not in conformity with rates of pay for positions of similar kind or class in seniority district No. 2; therefore, claim was filed and appealed to the highest officer of the Carrier. Several conferences were held in an effort to compose this dispute on the property, but to no avail.

POSITION OF EMPLOYEES: It is the position of the Employees that, among other rules, Rules 41(a), 42 and 43 of the Clerks' Agreement between the parties, effective January 1, 1943, were violated. These rules read as follows:

"Rule 41—Rates for New Positions. (a) Rates of pay for new positions shall be in conformity with rates of pay for positions of similar kind or class in the seniority district where created.

Rule 42—Preservation of Rates. An employee temporarily assigned to a higher rated position shall receive the higher rate while occupying such position. An employee temporarily assigned to a lower rated position shall not have his rate reduced.

Rule 43—Rating Positions. Positions, not employees, shall be rated, and the transfer of rates from one position to another shall not be permitted."

The method used does not take into account the nature of the work assigned to Desk 19, the duties and responsibilities assumed by the occupant, or the limited qualifications and training required for a proper discharge of them.

These factors were taken into consideration by the carrier in evaluating the new position, and the rate of pay was determined after giving full consideration to them in relation to the duties and responsibilities of the other employes in the seniority district, and in full compliance with the meaning and intent of Rule 41.

In the judgment of the carrier the rate determined was fair, equitable and fully compensatory.

The claim should be denied.

This dispute has been handled on the property up to and including the highest officer designated to handle claims and grievances.

All data contained herein has in substance been presented to the employes or their duly authorized representative and is made a part of the question in dispute.

(Exhibits not Reproduced.)

OPINION OF BOARD: The Organization here is questioning the propriety of the Carrier's action in establishing a rate of \$12.00, daily, for the position designated as Desk No. 19, Auditors Office, Toledo, Ohio. It is asserted that the position in question is a "new position" within the meaning of Rule 41 (a) which reads as follows:

"RULE 41

"RATES FOR NEW POSITIONS

"(a) Rates of pay for new positions shall be in conformity with rates of pay for positions of similar kind or class in the seniority district where created."

and that the Carrier here failed to properly apply the Rule in establishing the rate of \$12.00 for the reason that an examination of the duties assigned to the "new position" reveals that the same were, in the main, taken from other positions at the Station bearing a much higher rate, and as such was a "composite position" entitled to a "composite rate" of \$12.85, daily, to be in conformity with the rates of a similar kind or class in the same seniority district as the position in question.

The Respondent took the position that while the assignment designated as Desk No. 19 was a new position within the meaning of Rule 41 (a), there existed no other comparable position with a corresponding rate which could be said to be a position of a similar kind or class inasmuch as the duties transferred from other positions and assigned to the position in question did not require the assumption of the responsibilities of any of the higher rated positions and did not entitle the occupant of this position to a higher rate than that assigned, particularly since they (the Respondent) had given full consideration to these factors and evaluated same in determining the proper rate.

The parties are in agreement that the position designated as Desk No. 19 is a new position. Rule 41 (a) sets out the criteria for establishing rates for new positions, namely, that such positions shall be assigned rates in conformity with rates of positions of a similar kind or class. Inasmuch as the duties of this position were drawn from some six other positions at this station, it is clear that the same is in truth and in fact a "new position" to which a "new rate" can be properly designated. This is in effect admitted by the Petitioner when they ask the Board to order the institution of a composite rate of \$12.85 as a rate which is a "composite average" of rates

of other positions. It was likewise recognized by the Respondent when a new or "random rate" of \$12.00 was established. While the duties which were removed from the other positions and which became an integral part of the duties of the new position are listed in the record, it (the record) fails to give a detailed job description or list of duties of the positions designated as Desks Nos. 5, 6, 7, 11, 14 and 18, so, therefore, we are unable to conclude that this new position, that is, Desk No. 19, is of a similar kind or class within the meaning of Rule 41 (a) and upon which the request of the Petitioner must be bottomed. There being insufficient evidence of record to conclude that there existed a position of similar nature, we are here asked to equitably establish a rate of pay of \$12.85 daily as being the proper rate commensurate with the work performed on such new position. This we cannot do. We agree with the principle enunciated in Award 4034 wherein it was held:

"* * * Its requirement is that wages fixed shall be in conformity with presently filled analogous positions (Award 2683) in comparable localities within the jurisdiction covered by the terms of the Agreement (Award 3483). Since there was no way of determining the rate of pay under the criterion imposed by Rule 38 (a) we think the Carrier's action in fixing the salary on the basis it says it did was justified.

"In so concluding we are not unmindful of Claimant's argument to the effect there are no rules in the Clerks' Agreement giving the Carrier the right to set rates of pay by unilateral action on newly created positions. The converse is the rule. The fallacy in Claimant's position rests in the fact that primarily the right to fix wages is a prerogative of management which is lost only by contractual relinquishment and can always be exercised unless its freedom of action in that respect clearly appears, from the terms of the instrument relied on as having that effect, to have been delegated to others.

"Failing to find the Carrier violated any rules of the Agreement relied on as grounds for an affirmative award, our duty is to deny the claim."

A denial award is, therefore, required.

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 Carrier did not violate the effective Agreement.

AWARD

Claim denied.

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.