

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer 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 Schedule Agreement effective September 1, 1949, when it failed and refused to properly rate Positions Nos. 102 and 103, Service Man Lincoln, Nebraska, as advertised by Bulletins Nos. 1 and 2, June 8, 1953, at \$1.463 per hour.

(b) That the Bureau now be required to establish for the same positions and other positions established subsequent thereto with identical duties and responsibilities at Lincoln Nebraska, the same rate of \$1.571 per hour, plus all subsequent general wage increases and adjustments to claimants W. F. Walther and G. R. Nielsen and all succeeding employees who may be assigned to these positions until this dispute is settled.

EMPLOYEES' STATEMENT OF FACTS: The Bureau issued on June 8, 1953, their Bulletins Nos. L-1 and L-2 establishing "NEW" positions Nos. 102 and 103, Service Man, at rate of \$1.463 per hour with duties and responsibilities as shown by Employees' Exhibits 1 and 2. The claimants referred to above were assigned to these positions by Bulletin dated June 23, 1953.

The Employees, after making an investigation, filed claim (Employees' Exhibit 3) in behalf of the claimants advising the Foreman at Lincoln, Nebraska that the Bureau had violated, in our opinion, Rule 45 of the Schedule Agreement covering "NEW POSITIONS" and asked that a rate of \$1.571 per hour be established.

The Foreman at Lincoln, Nebraska, on June 24, 1953, and July 16, 1953 (Employees' Exhibits 4 and 5) acknowledged the General Chairman's letter of June 16, 1953, and advised the positions were established in accordance with Rule 45 of the Working Agreement.

The dispute was then appealed to the District Manager on July 17, 1953, (Employees' Exhibit 6) and the file was declined again by the District Manager, per Employees' Exhibit 7.

This rule reads:

"Rule 45—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."

In our Statement of Facts we have shown beyond any element of doubt that the rate of \$1.493 per hour currently in effect at Lincoln, Nebraska is the same as is in effect at Atchison, Kansas and Topeka, Kansas and is higher than the rate at Oklahoma City, Oklahoma, although the four markets mentioned are all in the Kansas City Bureau Seniority District, therefore, it is obvious to any one that the basis of this claim has absolutely no merit. It most assuredly is not predicated on fact but presumably on a supposition.

We have stated and again repeat that if the rate of pay the Employees desire be made effective at Lincoln, Nebraska it would exceed the rates in effect at some of the other markets in our Kansas City Bureau Seniority District where the duties and responsibilities of the positions are identical with the duties and responsibilities at Lincoln, Nebraska, therefore, with the undeniably straight-forward facts before your Honorable Board, we are sure that only one conclusion can be reached, and that is this claim must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 8, 1953 Carrier bulletined two Service Man positions (designated as 102 and 103) at Lincoln Nebraska, Kansas City seniority district. Each of these vacancies was described by bulletin as a new position, the rate of pay being set at \$1.463 per hour. The claim is that this rate does not conform to the criterion set forth in Rule 45 dealing with new positions. The Organization contends the rate should be \$1.571 per hour. Rule 45 reads as follows:

"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."

When the General Chairman filed a written protest in this matter Foreman M. G. Watson, who had posted the bulletins, referred the question to the Carrier's Chicago headquarters. The Foreman subsequently replied that "the rates of pay for position referred to were established in accordance with Rule 45 of the Working Agreement." At subsequent steps in the progressing of the claim the Carrier continued to insist it had complied with Rule 45 in setting the disputed rate for these positions and asserted that this rate was the same as that prevailing at two other locations (Atchison and Topeka) in the Kansas City seniority district. The General Chairman contended that the rate of pay should be at least \$1.571 per hour to be "in line with the rates of pay for similar positions in the Grain Door Department." (Employees' Exhibit 6, Carrier Exhibit 3).

In its presentation before the Division the Carrier still asserts that the rate established for the positions in question is in "conformity with the wages for positions of similar kind or class in the seniority district" per Rule 45, but it also contends for the first time—so far as the record discloses—that contrary to their designation by bulletin, these positions were not new but had, in fact, been established in March 1952, approximately 15 months prior to the bulletin. Evidence in support of this latter contention did not appear until the Carrier made reply to Organization's ex parte submission. In responding thereto the Organization states it may be true that these positions were originally established in March 1952, which allegedly shows the Carrier was setting rates unilaterally, but states that in any event these positions went out of existence prior to June 8, 1953 when the bul-

letins were issued. Evidence belatedly offered by the Carrier shows that these positions were filled intermittently both prior to and after June 8, 1953.

The record shows that the rate of \$1.463 per hour indicated in the June 1953 bulletins for these positions was at the low end of the spread of rates for such positions at various locations within the Kansas City seniority district. The disputed rate was not "in conformity with the wages for positions of similar kind or class in the seniority district where created," to use the terminology of Rule 45. On the other hand, the rate of \$1.571 requested by the Organization was well within the limit set forth in this Rule. The principal question, however, is whether the disputed positions were, in fact, new positions as of June 8, 1953.

The Carrier has offered no adequate explanation for its action in bulletining them as "new" positions. When this point is considered in connection with the previously indicated fact that the claim was progressed on the property on the presumption that Rule 45 was applicable, we are led to the conclusion that the positions were in fact "new" when they were bulletined. While employes had been assigned to perform Service Man work at Lincoln, Nebraska intermittently prior to June 8, 1953, it appears that the assignments were not considered as regular positions. In any event, there is some doubt that the rate being paid beginning as of March 1952 conformed to the formula of Rule 45, which had been in effect since 1949. In summary, we are of the opinion and find that the claim must 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of November, 1957.