

Award No. 8749
Docket No. CL-8216

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, at Atlanta, Georgia, effective July 24, 1953, it established in the office of Freight Agent two positions of "Rate Clerk" at less than the Agreement rate of \$14.82 per day, and

(b) The rates of pay for the two positions shall now be fixed at not less than \$14.82 per day (basic) and Claimants, Mr. W. T. Richards, Jr., and Mr. G. P. Logan, their substitutes or successors be additionally compensated the difference between \$14.82 per day (basic) and what they have been paid for working positions advertised by Carrier's Bulletins Nos. 1207 and 1208.

EMPLOYEES' STATEMENT OF FACTS: On July 8, 1953, the Carrier's Agent at Atlanta, Georgia, issued Bulletin No. 1206 advertising vacancy in position of "Rate Clerk (Last occupant—new position)". (Employees' Exhibit "A"). The assigned hours of the position were 7:00 A.M. to 3:00 P.M. Rest days were stated to be Sunday and Monday. The rate of pay was stated to be \$14.82 per day, subject to a cost-of-living adjustment then in effect. This position was, under Agreement Rules, assigned to Mr. W. C. Hogg, effective July 24, 1953. (Employees' Exhibit "E".)

On July 8, 1953, the Carrier issued Bulletins Nos. 1207 and 1208, advertising vacancies in positions of "Rate Clerk" with assigned hours of 3:00 P.M. to 11:00 P.M. and 11:00 P.M. to 7:00 A.M. respectively. (Employees' Exhibits "B" and "C".)

The rate of pay of the position advertised by Bulletin No 1207 was \$14.43 per day (exclusive of cost-of-living adjustments). The rate of pay of the position advertised by Bulletin No. 1208 was \$14.20 per day (exclusive of cost-of-living increases).

SUMMARY

Carrier did not establish three additional new positions of rate clerk in the Atlanta Division seniority district in July 1953. Instead, it simply transferred three existing positions of rate clerk, carrying rates of \$15.62, \$15.23 and \$15.00 (basic rates \$14.82, \$14.43 and \$14.20 as of July 1953), which were already under the Agent's jurisdiction, from Inman Yard Office to the Atlanta Freight Station in the same seniority district.

Rule 46 (b) is not applicable and it does not, in any event, require that wages for new positions be exactly the same as wages for similar positions, as alleged by the Brotherhood in the instant case.

There was no "agreement rate" of \$14.82 (basic) per day, for the second and third trick positions of rate clerk.

The same employees who occupied the positions at Inman Yard Office were assigned to the positions at the freight station.

The evidence does not support the claim that Carrier violated the agreement. To the contrary, it has been shown that the positions in question were transferred in accordance with the terms of the agreement. For the reasons set forth herein the claim should be denied in its entirety and Carrier respectfully requests that the Board so decide.

All pertinent facts and data used by the Carrier in this case have been made known to the employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: For many years there were three Rate Clerk positions assigned at Inman Yard Office, Atlanta, one on each trick. Although the preponderating duties of these positions were the same, they carried different rates—the first trick position being the highest rated and the third trick position the lowest. Thus in 1935 the assigned rates were \$6.14, \$5.82 and \$5.63. By 1953 the base rates for these positions had become \$14.82, \$14.43 and \$14.20 for the first, second and third tricks respectively.

In July 1953 teletype machines were installed in Carrier's Atlanta freight station and Inman Yard Office for the preparation and handling of waybills, car orders and records. By bulletins dated May 13, 1953 Carrier gave notice that effective as of May 17 and 18 the subject Rate Clerk positions were abolished. On July 7, 1953 Carrier posted three Rate Clerk positions carrying the same rates of pay for particular tricks as the above "abolished" positions. The incumbents of the previous positions were assigned to the new positions effective July 24, 1953. Thereafter these employees worked at the freight station, performing substantially the same work as before. Although over two months elapsed between the abolishment of the old positions and the filling of the new ones, the employees involved worked in the "abolished" positions at Inman Yard until they moved to the freight station.

The Organization contends Rule 46 (b) of the Agreement required the Carrier to fix the rate of the new second and third trick positions at the amount paid the new first trick position, namely \$14.82 per day. The Carrier responds that the positions in question were simply transferred from one location to another within the same seniority district, and that no change in rate was required. It asserts the positions were abolished by bulletin and

then established as new positions only to assure that the incumbents of the Rate Clerk positions at Inman Yard would be entitled to exercise displacement rights in the event they did not desire to transfer to the freight station, which is located five miles away. Management points to the established fact that the previous positions had been bulletined as located at Inman Yard.

The effect of Carrier's action was to transfer the three Rate Clerk positions from Inman Yard to the freight station, and to transfer in like manner the incumbents of these positions, while providing these employees an opportunity to exercise displacement rights in the event they did not elect to accept the transfer. Although the positions at Inman Yard were abolished by bulletin in May 1953, they actually remained in existence until the incumbent Rate Clerks moved to the freight station. The previously established wage rates continued in effect while the positions were being bulletined for assignment at the new location. If Rule 46 (b) were applicable to this situation, the Carrier complied with the Rule by establishing the same rates for the same types of positions that were in existence when the bulletins were issued. In fact, there is no other logical way to justify the rate of \$14.82 for the new first trick position under Rule 46 (b). If the Inman Yard positions were deemed to have gone out of existence as stated in the abolishment bulletins, there no longer existed a comparable Rate Clerk position carrying a rate of \$14.82 in the seniority district. The Atlanta Agency had other Rate Clerk positions carrying various rates, namely \$15.14, \$14.90, \$14.93 and \$14.20. It is noted that the two rates last mentioned are identical to the rates of the two positions for which claim is now made.

We conclude that there is no showing of a violation of Rule 46 (b). A denial award is warranted.

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 Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of March, 1959.