

Award No. 10770

Docket No. CL-10111

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) Carrier violated the Clerks' Agreement when on June 21, 1957, it established, rated and bulletined position of General Clerk X-1482, Plaquemine, Louisiana, without regard to Rule 40 of said agreement.

(2) That the rate of General Clerk position Plaquemine, Louisiana, be corrected to \$16.56 per day, plus cost-of-living adjustment, retroactive to June 21, 1957, the date said position was established and that occupant Howard Capello and/or his successors, if there be any, be paid the difference between the established and corrected rate.

EMPLOYES STATEMENT OF FACTS:

(1) On June 21, 1957 by Bulletin No. 9, Superintendent R. H. Blassingame advertised position of General Clerk X-1482, Plaquemine, Louisiana at rate of \$16.29 per day, plus cost-of-living adjustment, working assigned hours of 5:00 A. M. to 9:00 A. M.; 10:00 A. M. to 2:00 P. M., daily with Saturday and Sunday and legal holidays off, which position was assigned to Mr. Howard Capello by Supt. Blassingame's Bulletin 9-A, dated July 1, 1957.

(2) The duties of General Clerk position X-1482 are described as follows:

"Check unloading, loading and delivery of merchandise; make freight bills, make OK&D'S; bill freight, sign bills of lading; mail postal notices and such other duties as may be assigned."

See Employees' Exhibits 1 and 1-A.

Formal claim for adjustment of above rate was filed on June 29, 1957 by Division Chairman B. C. Green with Superintendent of Louisiana Division, Mr. R. H. Blassingame. (See Employees' Exhibit No. 2). This claim was declined July 1, 1957. (See Employees' Exhibit No. 3). On July 16, 1957, General

These Awards show, beyond the possibility of serious question, that, if Rule 40 of the Agreement applied, under the facts of this case, then it prescribed \$15.42 per day, plus the cost of living allowance, as the rate of pay for the new position. We explained this to the Brotherhood in conference, and in our denial decision. We explained, carefully, that if we had considered that Rule 40 applied, we would have had to fix the rate at \$15.42, rather than at \$16.56, as claimed; and that if we were going to change it, the change would be a reduction, to accord with those nearby, rather than an increase, to the rate claimed.

If the Board should sustain Claim 1, and rule that Rule 40 applied, then the Carrier requests the Board to deny Claim 2, and rule that proper rate should have been \$15.42 per day.

All known relevant argumentative facts and documentary evidence are included herein. All data in support of Carrier's position has been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: A review of the record above shows that the confronting dispute is similar, if not identical, to that covered by Third Division (Supplemental Board) Award No. 10129 (McDermott), wherein the Employees' claim was sustained. We, therefore, hold that Award 10129 is controlling and claim is 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 Carrier and 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 herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September, 1962.