

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

David L. Kabaker, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES****CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5483) that:

1. Carrier's action in applying a lesser rate of pay on Head Price Clerk Position No. 14 in the Office of Chief Purchasing Officer, Chicago, Illinois, than the rate of pay established on and for that position violated, and continues to violate, the Clerks' Agreement.

2. Carrier shall compensate Employee J. Beton, the present occupant of Position No. 14, in the amount of Ten Dollars and Thirty-three Cents (\$10.33) per month for the months of August and September, 1962; and shall compensate Employee J. Beton, his successor or successors, a like amount for each month thereafter that the violation continues.

EMPLOYEES' STATEMENT OF FACTS: On April 4, 1956, Bulletin No. 9 was issued advertising Head Price Clerk Position No. 14 in the Office of Chief Purchasing Officer, Seniority District No. 116, at a rate of pay of \$470.67 per month. Attached as Employees' Exhibit A is a copy of Bulletin No. 9.

On April 11, 1956, assignment Bulletin No. 9 was issued awarding Head Price Clerk Position No. 14 to Employee Dorrell Thelander. Attached as Employees' Exhibit B is a copy of Bulletin No. 9.

Effective with the assignment of Dorrell Thelander, the rate of Position No. 14 was increased in the amount of \$10.33 from the negotiated rate of \$470.67 to \$481.00 per month.

Under the provisions of the National Wage Agreement, a general increase in rates of pay of ten (10) cents per hour, effective November 1, 1956, increased the rate of Position No. 14 to \$498.40 and the rate effective November 1, 1956 as furnished the organization by Assistant to Vice President,

There is attached hereto as Carrier's Exhibit I copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of April 3, 1963.

(Exhibits not reproduced.)

(Page references contained herein relate to original document.)

OPINION OF BOARD: Carrier paid one Dorrell Thompson, occupant on Head Price Clerk Position No. 14, the amount of Ten Dollars and Thirty-three Cents (\$10.33) more than the negotiated rate of pay established for that position, from April 11, 1956 through July, 1957. In July of 1957, Thompson left the position and thereafter the later occupants of that position were paid the negotiated rate.

The Employees contend that when the Carrier unilaterally increased the rate of pay to the first occupant of the position, its action made the increase a part of the rate for the position and thereby established a new position. It asserts that the Carrier could not later reduce the rate except through mutual agreement or negotiation.

The Employees further point to Rule 16 as support for its position that inasmuch as rating of employees is illegal, the Board should sustain the Claim.

The Carrier basically contends that the increase of pay to Thompson was a gratuity which could be unilaterally withdrawn. It further urges that the claim be denied for the reason that it is not claimed by the Employees that the payment of the gratuity constituted a violation of the Agreement.

The record shows that the duties of the position have remained basically unchanged since its inception, and no contention is made by either party that duties have been added to or subtracted from the position.

While the record does not reveal the exact reason for the increase of \$10.33 to the occupant of the position in 1956, it is clear that there was no contractual obligation which required the Carrier to increase the pay. The conclusion must be that the increase was a gratuitous action on the part of the Carrier which could be withdrawn by it at a later time. Award No. 13217.

It must be the further conclusion that the payment of the sum of \$10.33 to the occupant of the position for fifteen months, did not establish a new position thereby requiring the Carrier to pay a different rate for the position than the negotiated rate. The obligation to pay wage rates is imposed upon the Carrier through mutual agreement by the Parties resulting in a negotiated rate. This obligation continues unless changed by negotiation. In this area, the Board is without jurisdiction.

It should be clearly understood that the finding in this case is not based upon the Carrier's contention that the claim is barred because "successor or successors" are unnamed claimants. National Disputes Committee Decision No. 19 and other Awards of this Board (14088) have disposed of that issue and it is the finding that the Carrier's contention is without support.

We conclude, therefore, that under all the circumstances presented, the agreement was not violated, and the claim must be denied.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1966.