

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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-5828) that:

1. Carrier violated the Clerks' Rules Agreement when it established three new Wheel Roller positions in the Store Department at two different rates of pay.

2. Carrier shall now be required to compensate employees Frank Motola, August W. Steinbrenner, Thomas W. Ziegenhagen, the regularly assigned occupants of Wheel Roller Positions Nos. 5188, 5189 and 5190, their successors, if there be any, at a rate of \$21.6068 per day from September 29, 1964 until the violation is corrected and agreement reached covering these rates of pay.

EMPLOYEES' STATEMENT OF FACTS: On September 17, 1964, Bulletins No. MM-182, MM-183 and MM-184 were issued by Carrier, each advertising a position of Wheel Roller in Seniority District No. 118, i.e., Position 5188, rate of pay \$21.2068 per day, Position 5189, rate of pay \$21.2068 per day and Position 5190, rate of pay of \$19.8144. Submitted as Employees Exhibits A, B and C, respectively are copies of these bulletins.

It will be noted that the duties assigned to each of those positions by bulletin are identical.

There was no similar position in the seniority district when Wheel Roller Positions 5188, 5189 and 5190 were established; consequently, under the rules, the rate of pay to be applied to those positions was subject to negotiation and agreement.

The Carrier, however, not only unilaterally established the rate of pay, but established a lessor rate of pay on Position No. 5190 than the rate of pay established on Positions 5188 and 5189, although all three positions were of the same classification with the same duties assigned by bulletin.

On September 23, 1964 the General Chairman addressed the following letter to Mr. E. F. Volkman, Manager of Materials, Milwaukee, Wis.:

assigned rest days, the same rate of pay, etc. are attached hereto as Carrier's Exhibits A, B and C respectively.

Attached hereto as Carrier's Exhibit D is copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of March 17, 1965.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 18 of the Agreement reads:

"The rates for new positions will be in conformity with rates for position of similar kind or class in the seniority district where created. In the absence of a similar position in the district, the rate of pay for the new position will be established by agreement between the Carrier and the General Chairman."

On September 17, 1964, Carrier established three new wheel roller positions at Milwaukee, Wisconsin, in Seniority District No. 118. There were no positions of similar kind or class in the Seniority District. Carrier unilaterally set the rate of pay for the new positions. It failed and refused to establish the rate of pay by agreement in the manner prescribed in Rule 18; a fortiori Carrier violated the Agreement. We will sustain paragraph 1 of the Claim.

In paragraph 2 of the Claim the Organization prays that Claimants be paid the difference between the rate of pay unilaterally set by Carrier and a rate of \$21.6068 arbitrarily set by the Organization. We cannot accept the Organization's arbitrary rate. The rate can be established only through negotiations between the parties. We, therefore, will dismiss paragraph 2 of the Claim.

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 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 Carrier violated the Agreement.

AWARD

Paragraph 1 of Claim sustained.

Paragraph 2 of Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1966.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.