



Award No. 16828
Docket No. CL-17226

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6291) that:

(a) Carrier violated the Agreement at Asheville, North Carolina, when it required Mr. J. W. Bell, Chief Caller, to perform duties assigned to the Chief Yard Clerk by bulletin and refused to allow him the higher rate of pay.

(b) Carrier shall now be required to compensate Mr. J. W. Bell an additional 56 cents per day difference between his rate and that of the Chief Yard Clerk, beginning April 12, 1965, and continuing five days per week, Monday through Friday each week, until proper rate of pay is allowed.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the Class or Craft of employees in which the claimant in this case holds position and the Southern Railway Company.

Mr. J. E. Caldwell, Superintendent of Terminals, Asheville, North Carolina, issued instructions that beginning April 12, 1965, the Chief Caller would be required to handle the duties of calling all Clerks and Yardmasters. This work had always been the duty of the Chief Yard Clerk. The Chief Caller's duty was to call Yard and Road Crews.

The daily rate of the Chief Caller at the time was \$19.86 per day; the rate of the Chief Yard Clerk was \$20.42, and the Carrier refused to compensate Chief Caller Bell at the higher rate.

Local and Division Chairman, Mr. J. W. Bell, filed the initial claim in his own behalf on April 29, 1965, Employees' Exhibit A, and stated:

"I hereby make claim for Mr. J. W. Bell, Chief Caller at the Call Office, for the difference in the rate of pay of his position and the

(d) (Effective October 1, 1938.) Other Office and Station Employees — Office boys, messengers, chore boys, train announcers, gatemen, train and engine crew callers, caller-bus drivers (except exclusive bus drivers other than those at Knoxville, Tennessee, covered by supplemental agreement on page 72), telephone switch-board operators, office building and station watchmen other than those having police authority, and operators of certain office or station appliances and devices not requiring special skill or training such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering claims and other papers, adjusting dictaphone cylinders and work of like nature; employees gathering mail or other similar work not requiring clerical ability."

"RULE 46.

PRESERVATION OF RATES AND EMPLOYMENT

(a) (Effective June 1, 1921.) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

* * * * *

(b) (Revised, effective October 1, 1938.) Except as provided in Rule 44, the wages for new positions shall be fairly comparable with wages for positions of similar kind or class in similar locations in the Seniority District where created; if no comparable position in the seniority district in which new position is to be created, the rates for comparable positions in other similar districts and locations shall be considered.

(c) (Effective September 1, 1926.) The transfer of rates from one position to another shall not be permitted. Except when changes in rates result from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position."

OPINION OF BOARD: Carrier's Chief Yard Clerk had been handling the duty of calling all clerks and yardmasters. On April 12, 1965, Carrier's Superintendent of Terminals issued instructions that the Chief Caller (Claimant) would be required to handle this duty. The daily rate of the Chief Yard Clerk was 56 cents per day higher than that of Chief Caller. Claimant made claim for the higher rate and Carrier refused. Therefore, this Board is called upon to determine whether or not Claimant is entitled to the higher rate of pay because of the additional duty imposed upon him.

It is well settled that an employee assigned to a higher rated position need not fulfill all of the duties of the higher rated position in order to qualify for the higher pay (Awards 11981, 12088, 14681, 6965 and 9482). However it is equally well settled that there must be a substantial fulfillment of the position or work in order for a Claimant to collect the higher rate of pay (Awards 16536, 15629, 14490, 10912, and many others). In view of these prior Awards involving the instant issue, and in view of the record, this Board finds that Claimant was assigned the additional duty of calling Clerks and Yardmasters; that this duty was not dissimilar to his normal duties; and that the Organization has failed to sustain its burden of proof that Claimant substantially fulfilled the position requiring the higher rate of pay. This Claim will be denied.

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 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 19th day of December, 1968.