



Award Number 17608

Docket Number TE-16969

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York, New Haven and Hartford Railroad, that:

1. Carrier violated the Agreement when on March 7, 1966 it reestablished position of SS Operator-Clerk at Buzzards Bay, Massachusetts at rate of \$2.7588 per hour when the rate should be \$2.8588 per hour, based upon the agreed rate of \$1.582 per hour, plus subsequent increases.
2. Carrier shall be required to apply the proper rate of pay of the position and to pay the incumbent for the difference, beginning March 7, 1966.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the New York, New Haven and Hartford Railroad Company and this Union, dated September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

The September 1, 1949 Agreement, on page 58, enumerates three (3) positions on the Boston Division as listed below:

Occupation	No. of Positions	Rates Hourly or Monthly with*
Agent	1	\$1.606
SS Operator (x)	1	1.582
SS Operator (x)	1	1.558

(x) SS is abbreviation for Signal Station.

The differentials were maintained through various flat increases and recorded in bulletins issued by the Superintendent through the year 1959 when the first trick position was abolished, on June 23, 1959, and the agent's position reclassified as agent-SS operator. At the same time the remaining SS operator's position, second trick, the lowest rated position, was reclassified as

volved is a new position the rate for which the Carrier established in full compliance with Article 2 of the schedule Agreement.

Attached, in exhibit form as listed below, are copies of the pertinent correspondence in this case:

A—District Chairman Lambert's appeal to Superintendent Gregg dated February 26, 1966.

B—Superintendent's decision dated February 28, 1966, to Mr. Lambert.

C—General Chairman Kelleher's appeal to the undersigned dated March 8, 1966.

D—Carrier's decision to General Chairman Kelleher dated April 27, 1966.

Copy of the Agreement between the parties dated September 1, 1949, as amended, is on file with your Board and is, by reference, made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: In 1959, Carrier abolished two S. S. Operator assignments at Buzzards Bay, but retained the Agent at that location. Prior to the abolishment of these two positions, one S. S. Operator made 2.4¢ less per hour than the Agent; and the second S. S. Operator made 2.4¢ less per hour than the first S. S. Operator. The abolishment of these two positions was caused by the discontinuance of all passenger service. There is still no passenger service at this location. The only trains operating through Buzzards Bay are two local freights five times per week. On March 8, 1968, the Falmouth and Wareham agencies were consolidated into Buzzards Bay and the position of S. S. Operator-Clerk was filled and assigned to this location at the rate of \$2.7588 per hour. The Organization contends that the 2.4¢ differential between the Agent and this position should be maintained for the reason that this position is a re-establishment of the S. S. Operator position abolished in 1959. Also, the Organization contends that the only two comparable positions discussed on the property were those of Framingham at the hourly rate of \$2.9678 per hour as compared with \$2.7588 at Buzzards Bay. Carrier contends that the position in question is a new position—not a re-established position; that the position in question has the same hourly rate as the S. S. Operator-Clerk position at Needham Junction; and that this Board does not have authority to fix rates of pay.

It appears to this Board that the Organization has fallen short of sustaining its burden of proof that the position filled in 1968 was a re-established position. In fact, the undisputed facts contained in the record conclusively show that the old position of S. S. Operator was occupied under substantially different circumstances than the now existing operation at this location; such as the complete absence of passenger service and the merger above referred to. Therefore, this case falls under Article II(c) which is:

“When new positions are created, rates of pay will be fixed in conformity with those of existing positions of similar work and responsibility in the same seniority district.”

This brings us to the question of whether or not Carrier based the rate of pay of this new position in conformity with rates of pay of comparable

positions within the Seniority District. The record discloses that the only two comparable positions discussed on the property were the two Framingham positions. Also, the record does not reflect that Carrier made any attempt to rebut this comparison. It is true that Carrier proposed other comparisons before this Board, but these late comparisons, not part of the record on the property, cannot be considered by this Board. Therefore, this Board finds that under Authority of Award 11440 (Dolnick), Carrier should adjust the rate of pay in question under the guide lines of Article II(c) as compared with the comparable positions discussed on the property, located at Framingham; however, the adjustment is limited to an amount not to exceed the rate stated in the Statement of the Claim herein, \$2.8588 per hour. This Board has no authority to enlarge a claim. By this Award, this Board is not attempting to establish rates; we are merely carrying out the provisions of Article II(c).

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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1969.