

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20503  
Docket Number CL-20541

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees

PARTIES TO DISPUTE: (

(Fort Worth and Denver Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7436) that:

1. Carrier violated and continues to violate the provisions of Article VIII of the February 25, 1971, Agreement, particularly Section 3 Paragraph (b) of said Article, when it failed or refused to establish the highest rate of pay of the positions involved when it abolished positions and created new ones as a result of combining the telegrapher and clerk work and functions at North Yards, Fort Worth, Texas.

2. Carrier shall now be required to establish a rate of \$4.8253 per hour on the positions of First Clerk-Operator, Second Clerk-Operator, Third Clerk-Operator, Relief Clerk-Operator No. 1, and the Relief Yard Clerk and Clerk Operator No. 2 for the days such position relieves a Clerk-Operator position, subject to all subsequent wage increases.

3. Carrier shall now be required to compensate Messrs. T. C. Stockton, P. L. Smith, W. A. Brown, W. R. Craven and L. R. Dendy and/or their successors the difference between the rate of \$4.6844 per hour and the rate of \$4.8253 per hour effective April 3, 1972, and continuing until this violation is corrected and subject to all subsequent wage increases.

OPINION OF BOARD: This claim involves the interpretation of Article VIII, Section 3(b) of the National Agreement of February 25, 1971. Section 3(b) reads:

"(b) When new positions are created and/or positions abolished as a result of the combining of such work and/or functions the rate of pay of the new or surviving positions will be no less than the highest rate of pay of the positions involved."

Article VIII permitted Carrier to combine Clerks' and Telegraphers' positions under certain stated conditions. Those conditions were met here, and a combination of a number of positions at Carrier's FW & D North Yard at Fort Worth was accomplished on April 1, 1972. The positions prior to combination were:

Clerical

|  | <u>Rate of Pay</u> |                |
|--|--------------------|----------------|
|  | <u>Hourly</u>      | <u>Daily</u>   |
| Chief Yard Clerk                         |                    | \$38.10        |
| First Chief Yard Clerk                   |                    | 36.07          |
| Second Chief Yard Clerk                  |                    | 36.07          |
| Third Chief Yard Clerk                   |                    | 36.07          |
| Relief Chief Yard Clerk No. 1            |                    | 36.07          |
| Relief Yard Clerk-Chief Yard Clerk No. 2 |                    | 34.88 and 36.0 |
| First Yard Clerk                         |                    | 34.88          |
| Second Yard Clerk                        |                    | 34.88          |
| Third Yard Clerk                         |                    | 34.88          |
| General Clerk                            |                    | 35.63          |
| Porter                                   | \$4.0130           |                |

Telegraphers

|  | <u>Hourly</u>  |
|--|----------------|
| Working Wire Chief-Telegrapher   | \$4.8253       |
| Telegrapher  | 4.6844         |
| Telegrapher  | 4.6844         |
| Relief Telegrapher-Working Wire Chief-Telegrapher  | 4.6844 and 4.8 |
| Wichita Falls-Fort Worth Relief Telegrapher<br>(headquartered at Wichita Falls and relieved<br>there 4 days and 1 day at Fort Worth) | 4.6844         |

The combined positions are:

|  | <u>Rate of Pay</u> |                |
|--|--------------------|----------------|
|  | <u>Hourly</u>      | <u>Daily</u>   |
| Chief Yard Clerk                         |                    | \$38.10        |
| First Clerk-Operator                     | \$4.6844           | 37.48          |
| Second Clerk-Operator                    | 4.6844             | 37.48          |
| Third Clerk-Operator                     | 4.6844             | 37.48          |
| Relief Clerk-Operator No. 1              | 4.6844             | 37.48          |
| Relief Yard Clerk & Clerk-Operator No. 2 | 4.6844             | 34.88 and 37.4 |
| First Yard Clerk                         |                    | 34.88          |
| Third Yard Clerk                         |                    | 34.88          |
| General Clerk                            |                    | 35.63          |
| Porter                                   | 4.0130             |                |

A literal reading of Section 3(b) makes it clear that the "rate of pay of the new or surviving position will be no less than the highest rate of pay of the positions involved." This is clear language which shows that the parties intended to resolve the question of pay for new or combined positions by extending to those positions the highest rate of pay which any involved position had carried.

There is no question here that Working Wire Chief-Telegrapher was one of the positions involved and that it carried the highest rate of pay of any involved position. Carrier asserts that the incumbent, while carrying the job title and rate of the position was not actually performing the duties normally associated with it. As a consequence, Carrier says, none of the duties of Working Wire Chief-Telegrapher can be found in the combined or new positions. Carrier relies on cases, which have been decided under dissimilar rules, that hold that one who claims the rate of a position must show that he or she is performing the functions of the position.

The principle involved in those cases has no application here. The applicable language is quite clear. When a combination of positions is undertaken the new or surviving positions will carry, at least, the rate of pay of the highest rated position involved. There is no room here for the factual inquiry Carrier wishes the Board to undertake. First, there is no requirement that the Organization show what duties have survived. Second, Carrier cannot avoid the clear requirement of Section 3(b) by showing that a position's duties had not, in fact, been performed by the incumbent or that they are not being performed by some or all of the combined positions.

The rule is one by which the parties intended to obviate all such inquiries. Where, as here, the facts show that a combination, such as Section 3(b) permits and contemplates has taken place, the Board has no choice but to apply the rule as it is written. In this case the result is that the claim must be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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: A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1974.