

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24205
Docket Number CL-24090

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{ Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9417) that:

- (a) The Southern Pacific Transportation Company violated the Clerks Agreement when it failed and/or refused to properly compensate the employees stated herein, within the provisions of Article VIII of the January 13, 1979, National Agreement.
- (b) Employees C.S. Bondoc and 22 other Key Punch Operators listed on Exhibit B hereto, shall now be compensated for work performed on positions indicated in Attachment "A", and all subsequent assignments to Key Punch Operator positions, for February 14, 1979, and for each date thereafter to which they are entitled to receive compensation, at the established daily rate of their respective positions, in lieu of compensation allowed.
- (c) Rate and Division Clerks R.H. Coxon, Position 76, L.K. Pattison, Position R-77, and V.C. Domingo, Position R-78, be compensated for work performed on position indicated herein and all subsequent assignments to "Rate Clerk positions" including positions of Rate Clerk, Senior Rate Clerk, Senior Division Clerk, Rate and Division Clerk, Senior Rate and Division Clerk, for February 14, 1979, and for each date thereafter to which they are entitled to receive compensation, at the established daily rate of their respective position(s), in lieu of compensation allowed.
- (d) Calculator Machine Operators A.S. Custodio, Position J-4, and S.J. Wei, Position J-12, be compensated for work performed on position indicated herein, and all subsequent assignments to Calculator Machine Operator positions, for February 14, 1979, and for each date thereafter to which they are entitled to receive compensation, at the established daily rate of their respective position(s), in lieu of compensation allowed.

(e) Mr. J.W. Sutherland be compensated for work performed on Position No. C-4, Calculator Machine Operator, and all subsequent assignments, to positions of Calculator Machine Operator, for April 2, 1979, and for each date thereafter to which he is entitled to receive compensation, at the established daily rate of his position(s), in lieu of compensation allowed.

(f) Senior Division Clerk N. Ogao, Position D-91; Senior Rate and Division Clerk D. Collins, Position D-80; Rate and Division Clerk J.D. Krupnick, Position D-49; Rate and Division Clerk N.F. Capule, Position D-59, and Calculator Machine Operator T.L. Rodriguez, Position C-6, be compensated for work performed on position indicated herein and, in the case of employee T.L. Rodriguez, all subsequent assignments to Calculator Machine Operator positions and, in the case of each other named employee, all subsequent assignments to "Rate Clerk positions" including positions of Rate Clerk, Senior Rate Clerk, Senior Division Clerk, Rate and Division Clerk, Senior Rate and Division Clerk, for February 14, 1979, and for each date thereafter to which they are entitled to receive compensation, at the established daily rate of their respective position(s), in lieu of compensation allowed.

(g) Key Punch Operators C.M. Williams, Position ZA-185; J.D. Pinkney, Position ZA-314; E. Ferguson, Position ZA-189; Ida James, Position ZA-324; C.T. Younger, Position ZA-309; E.A. Almarinez, Position ZA-311; and A.F. Sorber, Position ZA-312, be compensated for work performed on position indicated herein and all subsequent assignments to Key Punch Operator positions, for February 14, 1979, and for each date thereafter to which they are entitled to receive compensation, at the established daily rate of their respective position(s) in lieu of compensation allowed.

(h) Rate and Division Clerks R.H. Coxon, Position R-36; L.K. Pattison, Position R-56; H.V. Prince, Position R-74; S.G. Athey, Position R-75; and G.O. Manzano, Position R-41, be compensated for work performed on position indicated herein and all subsequent assignments to Rate Clerk positions including positions of Rate Clerk, Senior Rate Clerk, Senior Division Clerk, Rate and Division Clerk, Senior Rate and Division Clerk, for February 14, 1979, and for each date thereafter to which they are entitled to receive compensation allowed.

(i) Mrs. S.S. Leano be compensated for work performed on Position ZA-179, Key Punch Operator, and all subsequent assignments to positions of Key Punch Operator in the department of Central Collections, for September 3, 1979 and for each date thereafter to which she is entitled to receive compensation at the established daily rate of her position(s), in lieu of compensation allowed.

OPINION OF BOARD: This dispute deals with the Agreement dated January 13, 1979, and particularly Article VIII. That Rule provides as follows:

"ARTICLE VIII - ENTRY RATES

Section 1 - Service First 12 Months

Employees entering service on and after the effective date of this Article shall be paid as follows for all service performed within the first twelve (12) calendar months of service:

(a) For the first twelve (12) calendar months of employment, new employees shall be paid 85% of the applicable rates of pay (including COLA).

(b) Employees who have had an employment relationship with the carrier and are rehired will be paid at established rate after completion of a total of twelve (12) months' combined service.

(c) Service in a craft not represented by the organization signatory hereto shall not be considered in determining periods of employment under this rule.

(d) Any calendar month in which an employee does not render compensated service due to voluntary absence, suspension, or dismissal shall not count toward completion of the twelve (12) month period.

Section 2 - Preservation of Lower Rates

Agreements which provide for training or entry rates that are lower than those provided for in Section 1 are preserved. If such agreements provide for payment at the lower rate for less than the first twelve (12) months of actual service, Section 1 of this Article will be applicable during any portion of that period in which such lower rate is not applicable.

Section 3 - Savings Clause

This Article shall become effective 15 days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date."

The Organization's basic position is that Carrier, having failed to give the appropriate notice provided in Section 3 of Article VIII, has forfeited the right to preserve the step-rate agreements which had been in effect since 1931. Thus, the Organization argues that the various Claimants are entitled to the full rate of their positions in accordance with Article VIII.

Carrier, in addition to challenging the lack of specificity in the Claims, asserts that Petitioner has totally misinterpreted the significance of Article VIII in that the step-rates, long in effect, apply to certain positions and the new rule is applicable only to newly hired employees following the effective date of the Agreement, February 14, 1979. Thus, according to Carrier, Article VIII and the step-rate agreements are wholly compatible and not mutually exclusive.

The Board has examined the language of Article VIII with care and has concluded that Petitioner has erred in its understanding of that provision. It is apparent, from the very first sentence of Section 1 of the Article, that the entire Article, dealing solely with entry rates, is applicable only to employees entering service on and after the effective date of the Agreement, which in this instance was February 14, 1979. There is no indication in the handling of this dispute that any of the Claimants were hired on or after February 14, 1979. Further there does not, on a prima facie basis, appear to be any incompatibility between the provisions of the step-rate agreements and the entry level rate provided for in Article VIII.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division - CMH

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

