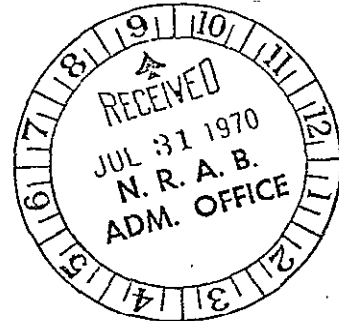


PUBLIC LAW BOARD NO. 445

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, EXPRESS AND STATION EMPLOYEES

-and-

SOUTHERN PACIFIC COMPANY
(TEXAS AND LOUISIANA LINES)



STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood, that:

1. The Carrier violated Section 6(a) of Article II of the Agreement of April 20, 1966, when, commencing June 30, 1968, it failed to properly compensate Clerk R. S. Draker "a protected employee" under the terms of said agreement at the normal rate of compensation of the position held by him on April 20, 1966, plus subsequent general wage adjustments.

2. The Carrier now be required to compensate Clerk R. S. Draker by the addition of \$0.9536 per day to his protected rate of compensation effective June 30, 1968, and in addition to this new protected rate apply other general wage changes effective July 1, 1968, and subsequent general wage changes for each and every work day until the violation is corrected.

OPINION OF BOARD:

On September 1, 1966 Claimant Draker--a "protected employee" as defined in Article II, Section 1 of the April 20, 1966 Agreement--was displaced from his Cashier position at San Antonio Freight Station by a senior clerk whose position had been abolished. Claimant complied with Section 8 and 9 of Article II in making displacement and was allowed his "normal rate of compensation" of \$24.9824 per day (rate of the Cashier position he formerly occupied) for service subsequently performed on his new Assistant Rate Clerk position which carried the lower rate of \$23.9924 per day.

In addition to establishing the rate of the position to which assigned on a certain date as the protected employee's "normal rate of compensation," Section 6(a) of Article II provides that "such compensation shall be adjusted to include subsequent general wage changes." In accordance with this re-

quirement, Claimant Draker's "normal rate of compensation" was adjusted to include general wage adjustments of 5%, 2%, 3%, 2% and 3% which became effective on January 1, 1967, January 1, 1968, July 1, 1968, January 1, 1969 and July 1, 1969 respectively.

The Organization contends that in addition to the subsequent general wage adjustments detailed above, claimant's normal rate of compensation should have included the amount added to the rate of his former Cashier position on June 30, 1968 resulting from distribution of the "Classification and Evaluation Fund" established by Article IV of the National Agreement dated December 28, 1967. The Carrier responds that the subject fund distribution was not a "general wage change" and thus there was no requirement to add the requested amount to claimant's "normal rate of compensation." The confronting question is therefore whether the distribution of the fund represented a general wage change within the meaning of Article II, Section 6(a) of the April 20, 1966 Agreement.

The terms and conditions for distributing the subject fund are set forth in the National Agreement dated April 2, 1968. Section 1, Item 1 thereof declares in pertinent part that the fund is "to be allocated as wage adjustments among selected positions carrying rates of pay that are found to need reevaluation and upward adjustments by reason of skills or special job requirements...." Item 2 sets forth fund distribution guidelines based on intra-carrier, inter-carrier and inter-industry inequities, and other criteria. Item 3 provides that if a local agreement is not reached on a particular railroad by June 1, 1968 regarding distribution of the fund as provided in Item 2, the fund "shall be distributed effective June 30, 1968, on that railroad to all employees covered by the pay provisions of the BRAC Agreement and who are in the top 62 to 67%...of the rate structure of the entire group of employees coming under the pay provisions of the Clerks' Agreement on the following basis..." It is next provided that this eligible

group shall be divided into five equal parts according to the level of rates of the respective positions, and that specified declining percentages (30%, 25%, 20%, 15% and 10%) of the fund will be used to adjust the rates of "positions" in each sub-group (starting with the highest salaried sub-group) in equal amounts within each of the sub-groups.

Since the subject parties failed to reach agreement by June 1, 1968 on distribution of the fund in accordance with the guidelines contained in Item 2 of the April 2, 1968 National Agreement, on June 24, 1968 they entered into a Memorandum of Agreement on arrangements for distributing the fund in accordance with Item 3 of the April 2, 1968 Agreement. This Memorandum called for wage increases of varying amounts (as determined by the Item 3 formula) to be applied to approximately 64% (i.e., 931) of the 1454 "jobs worked January 3, 1968." As a result of this fund distribution, the rate for the Cashier position from which Claimant Draker had been displaced on September 1, 1966 was increased by \$0.9536 per day, and the rate of the Assistant Rate Clerk position occupied by claimant was increased by \$0.7904 per day. Since the Carrier declined to add the \$0.9536 to claimant's "normal rate of compensation," and since the protected rate he was receiving exceeded the rate for his Assistant Rate Clerk position by more than \$0.7904 per day, he did not receive any monetary benefit from the fund distribution.

We are unable to regard distribution of the fund as a general wage change. As previously noted, the April 2, 1968 National Agreement (Item 1) provided that the fund was "to be allocated as wage adjustments among selected positions carrying rates of pay that are found to need reevaluation and upward adjustments..." The fund distribution guidelines set forth in Item 2 permitted more flexibility of application than the Item 3 formula but the two sections were intended to constitute alternate procedures for attaining the objective set forth in Item 1. The Item 3 formula clearly was designed to

correct what the negotiators of the April 2, 1968 National Agreement regarded as an unduly compressed wage structure. It was for this reason that distribution of the fund was limited to positions held by employees in the top two-thirds of the rate structure of the entire group of employees in the bargaining unit, with the amount of wage increase to be greater for the higher sub-groups of positions.

With one-third of the positions (and therefore employees) excluded from the distribution of the fund, it would be illogical to hold that this distribution constituted a general wage change, which is normally considered to be a change affecting all the employees or positions in the bargaining unit. Moreover, the proportion of positions (and therefore employees) excluded from the fund distribution was simply too large to be considered a minor exception to an otherwise general wage change.

For the foregoing reasons the claim is without merit and will be denied.

A W A R D

Claim denied.

Lloyd H. Bailer
Lloyd H. Bailer, Neutral Member
and Chairman

David A. Ligon
David A. Ligon, Employee Member

B. W. Adams
B. W. Adams, Carrier Member

Dated: July 25, 1970