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AWARD NO. 20
NRAB DOCKET NO. CL-8443
CASE NO. 20
SSW FILE R-51-1072
BRC FILE NR-27-43

SPECIAL BOARD OF ADJUSTMENT NO. 169

PARTIES } The Brotherhood of Railway and Steamship Clerks
TO }
DISPUTE } St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Carrier violated, and continues to violate, the Clerks' current Agreement in establishing a position of Train Clerk, Pine Bluff, Arkansas, Yard Office, on February 8, 1951, at a rate which is \$0.47 a day less than the rate of pay of the other two Train Clerk positions in the same office and performing same type of work on different hours.

(2) That each and every employee who has occupied the Third Trick Train Clerk position, Pine Bluff Yard Office, since February 8, 1951, either regularly or temporarily be compensated \$0.47 per day, or \$0.705 per day involving the overtime rate, for each and every day they occupied said position, and until daily rate is adjusted to that of the other two Train Clerk positions.

NOTE: Reparation due employees to be determined by joint check of Carrier's payroll and other records.

FINDINGS: There were three positions titled Train Clerk at Pine Bluff, Arkansas, that were abolished and some two days thereafter new positions were established performing the same work that had been performed prior to that time.

December 8, 1952, Claimant here filed claim alleging that the Carrier had violated Rule 43 of the Agreement when the new positions were established. Rule 43 reads as follows:

"The rates of pay for new positions will be in conformity with wages for analogous positions of similar kind and class in the seniority district where established; if no existing position in the seniority district, then the rate of pay for the new position will be established with due regard to the rates attaching to comparable positions on other seniority districts."

The wording and spirit of Rule 43 is that in establishing new positions men performing the same work shall be paid the same amount of money. The evidence in this case indicates that the three train clerks were performing the same work on different shifts and that the Carrier established two of the positions at a rate of \$12.31 and the other at \$11.84. The Organization takes the position that in establishing a new position of the third trick train clerk with the same duties to perform as the first and second trick, the third trick train clerk should have been paid the same amount of money that was provided for the occupant of the first and second tricks.

The Board is of the opinion that Rule 43 of the Agreement was thus violated by the Carrier in this instance. The Board, however, is not taking the position that in newly established positions the Carrier is obligated to establish all the rates at any particular rate. There was no comparison to go by and if the Carrier had established, in this instance, a rate for all three comparable with what had been paid the lower rated employees there would have been no violation. It would have been a matter for negotiation between the Carrier and the Organization to rectify any rates that the Organization felt were not in keeping with the duties they were required to perform.

No claim was made in this instance until December 8, 1952, and, due to all the facts and circumstances in this case, that there had been a traditional difference in these rates and no complaint was made on them until December 8, 1952, the Board will limit the claimant to his claim beginning December 8, 1952, and deny any retroactivity on the claim and will sustain the claim as made here subsequent to December 8, 1952.

AWARD: Claim disposed of in keeping with the above Findings.

/s/ Frank P. Douglass
Frank P. Douglass, Chairman

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member

/s/ L. C. Albert
L. C. Albert, Carrier Member

(DISSENTING)

Tyler, Texas
March 22, 1957.

DISSENT OF CARRIER MEMBER TO AWARD NO. 20

Undersigned must dissent to the above award. Positions involved were abolished due to a yardmen's strike. Two days later service was restored and it became necessary to reestablish the positions which had been abolished. Division officers contacted the General Chairman to determine if the Organization was agreeable to reestablishing former positions without rebulletining and allow each former occupant to return to their former position.

The General Chairman agreed that this plan of handling was satisfactory. There was no discussion as to changing any of the former positions as to rates of pay or in any other respect.

Rule 10-5 requires that a position be bulletined if rate is changed, unless change results from negotiation for adjustment in rate. The rule reads:

"Except when changes in rates result from negotiations for adjustments, the changing of a rate of a specified position shall constitute a new position and such position shall be bulletined. However, when adjustments are made as a result of negotiations this rule shall not apply and the position shall not be bulletined, unless otherwise agreed to during negotiations."

There was no negotiation for adjustment in rate of this position, and the agreement that all positions would be filled without bulletining necessarily carried with it the fact that all positions would be reestablished at the former rate.

Under such circumstances Rule 43 had no application. The Carrier properly established the same rates on all positions which existed when positions were abolished.

For this reason, I dissent.

/s/ L. C. Albert
L. C. Albert, Carrier Member