

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM.—

"Claim of Dennis Sherman, Class A Helper, in the Stationery Store at San Francisco, California, for pay for each and every day since September 27th, 1934, that he has been required to work less than six days per week."

STATEMENT OF FACTS.—Dennis Sherman is regularly assigned to the position of Class A Helper in the Stationery Store at San Francisco, Cal. Since the date of institution of this claim, September 27, 1934, he has been required to lay off, without pay, on Saturday afternoon of each week. The rate of pay of this position is \$4.56 per day.

There is evidence an agreement between the parties bearing effective date of February 1, 1922, and the following rules thereof are cited:

"SCOPE—RULE 1

"These rules shall govern the hours of service and working conditions of the following employees subject to the exceptions noted below:

"(1) Clerks—

"(a) Clerical Workers.

"(b) Machine Operators.

"(2) Other office, station, and store employees such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, operators of certain office or station appliances and devices, telephone switch board operators, elevator operators, office, station, and warehouse watchmen and janitors.

"(3) Laborers employed in and around stations, storehouses, and warehouses.

"* * *"

"QUALIFICATIONS—RULE 2

"(a) Clerical workers.—Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports, and statements, handling of correspondence, and similar work.

"(b) Machine operators.—Employees who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring special skill and training—such as typewriters, calculating machines, bookkeeping machines, dictaphones, and other similar equipment.

"The foregoing definitions, paragraphs (a) and (b), shall not be construed to apply to:

"* * *"

"* * *"

"* * *"

"(4) Employees performing manual work not requiring clerical ability."

San Francisco been classified under and allowed the guarantee provisions of Rule 3 of Clerks' current Agreement.

The Stationery Store, Annex (A), San Francisco, in which Dennis Sherman, the Claimant, was and is employed, is a separate and distinct department, therefore, is not a part of any division organization and/or district store organization in the Stores Department; it is a separate seniority district, and it should be observed that no agreement was entered into nor arrangements made to place Class A Store Helpers in Stationery Store Department, Annex (A), San Francisco, under the guarantee provisions of Rule 3 of Clerks' current Agreement, and as heretofore stated, said Class A Helpers in said Stationery Store Department have never been classified as entitled to the guarantee provisions of Rule 3, neither have we, prior to the presentation of this claim by representatives of the Organization, beginning with December 27, 1934, received any claim and/or request from representatives of the Organization to so classify these employees, nor any indication that it was the contention of the Organization that these employees are within the purview of that Rule.

In the presentation and handling of this dispute, at no time did representatives of the Organization include the Stationery Store at Annex (A) in San Francisco.

The Carrier prays the Board to deny the request and claim of the Petitioner for the specific reasons as set forth by the Carrier in Section 1 of this brief, also based on evidence submitted by the Carrier in Subsequent sections of this brief, and in exhibits which accompany the brief, all of which prove conclusively that Class "A" Store Helpers in Stationery Store, Annex (A), San Francisco, are not included within the provisions of Rule 3 of Clerks' current agreement; that said rule has not been applied to such employees on this property at any time; that in the original submission as made by the Organization it was not contended by the Organization that Class "A" Store Helpers, Stationery Store Annex (A), of San Francisco, should be classified under said Rule 3, and no request was made by the Organization at that time nor at any time subsequent thereto until the presentation of this instant claim, to have said helpers included within the provisions of Rule 3; that if the Petitioner's request is granted, it will in effect, establish a new rule without following the procedure set up in Section 6 of the Railway Labor Act, and would therefore, be in violation of said Act.

OPINION OF BOARD.—The question of the jurisdiction of this Board was finally conceded by both sides at the hearing held and therefore it is unnecessary to discuss the objections originally made thereto.

The next question which should be considered is whether or not Rule 3, by its terms, embraces the position of Class A Helpers in the Stationery Store at San Francisco, and whether therefore, the employee involved herein is entitled to the benefit of the guarantee provision contained in Rule 3.

Whether or not this particular position is within Rule 3 depends upon the construction of Rule 1, hereinbefore quoted, which defines those entitled to the benefit of the rules of the Agreement and excepts those who are not entitled. We do not agree with the contention of the carrier that to conclude in favor of the employees in this case would be to make a new rule. In our opinion the question is solely one of construction. Only an interpretation of Rule 1, in connection with Rule 3, is asked. The particular question is whether or not this Class A Helper position is within the provisions of Rule 1. If so, the employee occupying this position is entitled to the benefit of the guarantee provision of Rule 3. Whether or not this position is within Rule 1, depends upon the terms of said Rule. If Rule 1 does not include, by its terms, this Class A Helper, then the employee is not entitled to the benefit of Rule 3. In the latter case this Board can only deny the claim of the employee. In the former case the claim must be sustained. Neither result has the effect of adopting a new rule but is merely interpreting the present rule.

In our opinion the Class A Helper in the Stationery Store at San Francisco is clearly within the Scope Rule (Rule 1) and is therefore entitled to the benefit of the guarantee provision of Rule 3. We believe that it is clear that some of the work done by the employee occupying this position is clerical work within the meaning of subdivision 1 (a) of Rule 1. A list of these duties is as follows:

1. Assisting Stationery Stockman in taking inventory.
2. Receiving material purchased for Store and Duplicating Bureau.
3. Waiting upon counter to fill special requisitions.

4. Assembling and shipping requisitions.
5. Handling price tags.
6. Assembling and shipping material for the Duplicating Bureau.
7. Assembling orders.
8. Assisting Stockman.

However, we are compelled to the conclusion that this employee is a store employe within the meaning of sub-division 2 of Rule 1, which has been quoted herein. The fact that this employe who works in a Stationery Store is a store employe is so evident as to require no extended discussion.

That an employe who occupies the position of Class A Helper in a Stationery Store is not a laborer within the exceptions to Rule 1, is also so clear as to require no argument.

The fact that the position involved herein is carried on the payrolls as an hourly rated position instead of a daily rated position is not significant. Rule 3 has two provisions: (a) that positions covered by groups 1 and 2 of Rule 1, are to be paid on the daily rate basis and (b) that positions covered by groups 1 and 2 of Rule 1 are guaranteed six days' pay per week except in case of holidays. In our opinion the first provision cannot be construed to be a condition precedent to the second provision. The only condition precedent to the application of the guaranteed provision in Rule 3 is that the position must be embraced by the groups defined in sub-divisions 1 and 2 of Rule 1. Therefore, the fact that the carrier carries the position in question on an hourly rate basis on its payrolls does not remove the position from the application of the guarantee provision of Rule 3.

The only question remaining is whether or not the negotiations carried on between the representatives of the employees and the representatives of the carrier amounted to a modification or an amendment of the application of the two pertinent Rules (1 and 3).

The negotiations referred to consist principally of an interchange of correspondence which is contained in the records as Exhibits 1-25.

The carrier contends that as the negotiations dealt with Class A Helpers in District and Division Stores only, and as the Stationery Store in which Employee Sherman is employed is under neither classification, he must necessarily be excluded from the benefit of any agreement reached and therefore is not entitled to the benefit of the guarantee provision of Rule 3. The argument of the carrier proceeds on the theory that only those Class A Helper positions specified in the negotiations can be given the benefit of Rule 3.

The employees, on the other hand, deny that any agreement for amendment or modification of the Rules was reached and moreover contend that even if an agreement had been reached such agreement could not supersede the effect of Rule 3, because the procedure followed was not the proper procedure for a change in the Rules.

It is unnecessary to decide whether or not any agreement to modify or amend existing rules reached as a result of negotiations conducted in the manner in which these were conducted would be effective.

In our opinion Exhibits 1-25 do not show any agreement reached with the view of excluding this particular Class A Helper position from the provisions of Rule 3. The Exhibits have been discussed in some detail in Docket CL-363 and it is unnecessary to examine them in detail again in this case. Suffice to state that the statements made therein with reference to the defects in the Exhibits so far as establishing a definite agreement to change existing rules is concerned, are equally applicable herein.

Moreover, it appears that the particular Class A Helper position involved herein was omitted by inadvertence or oversight, from the correspondence that was carried on by the representatives of the employees and the representatives of the carrier. There seems to be no substantial reason why this particular Class A Helper position should have been placed in a different category than the other Class A Helper positions concerning which the parties negotiated.

In our opinion the Exhibits referred to do not establish the fact that an agreement was reached between the parties to change the existing rules so far as this particular position is involved. The exhibits rather show that negotiations were carried forward with a view of reaching an agreement or understanding which was never fully consummated. Respecting certain matters the parties were in accord, there were however numerous questions on which they never did agree. There is nothing in this record on which to base a finding that the parties agreed that this particular Class A Helper was not to be consid-

ered within the guarantee provision of Rule 3. The record, insofar as Exhibits 1-25 are concerned, is devoid of any reference to this position. In view of these facts we cannot conclude that it was the intent of the parties to reach any agreement which would exclude this particular position from the operation and benefit of the provisions of Rule 3.

A change in the Agreement between the employer and the employees must be made in a proper fashion by fully authorized representatives of the employees and of the carrier. There should always be a clear intention expressed to modify, amend, or forego application of existing rules. This board should act with caution and should not find that a change in the rules was intended to be made unless that agreement is certain in its terms and clearly indicates an intention to modify the rules. To take a contrary view would be to weaken the binding effect and authority of existing Agreements between the carriers and the employees.

In our opinion the record falls far short of establishing a change in the Rules as interpreted and therefore the claim of the employees must be sustained.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 Class A Helpers are within the provisions of Rules 1 and 3 of the existing Agreement and therefore are entitled to the benefit of the guarantee provision of Rule 3.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1937