

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYES**

SOUTHEASTERN EXPRESS COMPANY

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

"(1) That the position nominally titled 'Depot Agent' at Charlotte, N. C. is subject to the scope and operation of the current agreement between the parties to this dispute and

"(2) That said position shall be classified, rated, bulletined and assigned in accordance with the rules of said agreement."

EMPLOYEES' STATEMENT OF FACTS: "(1) The carrier created a new position effective May 1, 1936 at Charlotte, N. C., on the payrolls of and under the supervision of General Agent, J. M. Small.

"(2) The carrier affixed a payroll or nominal title of 'Depot Agent' to said position and filled same by appointment without regard to the rules of the current agreement hereinafter referred to and quoted.

"(3) After the employees and their representatives had an opportunity to observe the duties assigned to and required of the appointed incumbent of said position, they noted and determined that such duties were subject to the scope and operations of their agreement.

"Such duties were as follows:

Checking express to and from the trucks, expediting and routing of shipments, assists in working trains, loading and unloading express in setout cars, waybilling and receiving express from patrons, and work incidental thereto during his entire tour of duty. Approximate hours of Assignment 7:00 A. M. to 9:00 P. M.

"(4) The proper Committee and Officers of the Brotherhood thereupon requested General Agent Small to bulletin and assign said position in accordance with the rules of their agreement. The carrier declined and has continued to decline to classify, rate, bulletin and assign said position in accordance with the agreement between the carrier and the brotherhood."

POSITION OF EMPLOYEES: "Rule 1 of the current agreement establishes its scope and specifically provides that it covers all employees of this carrier excepting those specifically stipulated in Rule 2 of the agreement.

"Rule 2 of the agreement reads as follows:

'Employees Excepted—Rule 2: These rules shall not apply to agents or their superiors in official rank, or to Depot Agents, General Foremen and other officials in supervisory positions who exercise such supervision through subordinate supervisory employees. Employees covered by agreements with Machinists, Blacksmiths, Harness Makers, Carpenters, Horseshoers and Painters, Route Agents, Traveling Loss and Damage Supervisors, Traveling Auditors, Special Agents (not watchmen) or to personal office forces as defined in Rule 3.'

"So far as material here excerpts from Rule 3 are quoted:

were performing such routine work as could be performed by them without detriment to their other duties and that it was proper for them to do so, and that this action is justified by this practice prior to the negotiation of the existing agreement, lack of anything in the existing agreement to prohibit it and the provisions of Rule 92 which save to the carrier those practices of long standing where they were not specifically prohibited by some rule of the agreement. It is significant that the existing agreement has been in effect for a period of more than ten years, during which time carrier has had supervisory or official positions performing routine work and, save for some cases where Chief Clerks were involved who are specifically prohibited doing routine work, there has not been a single grievance by reason of official or supervisory positions doing this routine work."

OPINION OF BOARD: Both parties have cited rule 2 of the current agreement, revised, effective August 27, 1927, which is the only rule pertinent to a determination of the issue in this case. Other rules, quoted in the record but omitted from quotation in positions of the parties here, come into play if the position is within the scope of the agreement.

Evidence of record shows the parties are in accord that rule 2 excepts from the provisions of the agreement Depot Agents "who exercise such supervision through other supervisory employees." While the Board holds that the rule does not require that all orders and instructions of the Depot Agent must be transmitted to the working force through other subordinate supervisory employees, in order for the position to come within the exceptions, the rule does require that he exercise supervision through others who are in fact supervisory employees. The condition of the rule was not met when the subordinate supervisory employee, through whom the excepted employee exercised his supervision, was engaged in non-supervisory duties, for substantial periods of time, during which there were supervisory duties to be performed at a place on the premises where he was not available to perform supervisory duties. In other words, the condition was not met if the excepted employee was substituted for the subordinate supervisory employee as a regular thing for substantial periods during his tour of duty, as the record in this case indicates. It is the judgment of the Board, therefore, that if the carrier elects to continue the position herein described as Depot Agent, with its present assigned duties, it shall be deemed to come within the scope of the agreement and treated accordingly.

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 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 if the carrier elects to continue the position herein described as Depot Agent, with assigned duties which are not in fact those of a Depot Agent, which election shall be made within fifteen days from date hereof, it shall be deemed to come within the scope of the current agreement and treated accordingly.

AWARD

Claim sustained to the extent indicated in the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill. this 27th day of May, 1938.