

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Dozier A. DeVane, Referee

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**PARTIES TO DISPUTE:**

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood of Railway Clerks that rosters be posted in accordance with the provisions of Rule 26 recording names, etc. of all office, station, storehouse, and warehouse watchmen as embraced by Group 2 of Scope Rule 1, and which shall include the watchmen in office buildings, watchmen in and around freight and passenger stations, watchmen occupying watchmen's offices at entrance to Merchandise Piers at Newport News, Virginia, and watchmen occupying watchmen's offices at entrance to Huntington Stores and Shops at Huntington, West Virginia, and who also make rounds through the store houses and warehouses."

**EMPLOYES' STATEMENT OF FACTS:** "The office, station, storehouse, and warehouse watchmen were placed under the clerical Agreement No. 6 effective November 16, 1936, and under the provisions of Rule 26, the Management was required to post rosters during the first week in January showing the names, seniority date on the district, seniority date on the roster, present location, position, and rates of pay. However, the Management failed to post the rosters in accordance with the provisions of the Rule, as the result of which we began handling with the Superintendents over the System in an effort to have the rosters posted, the claim reaching Mr. J. B. Parrish Assistant Vice-President (the highest officer to whom appeals are made on the property), March 22, 1938, resulting in his declining the claim under date of April 15, 1938, taking the position that the positions in question, while covered by the Agreement, had been excepted from the rules by Supplementary Agreement covering excepted positions on file with our Organization and the Management, with which position we did not agree.

"Rule 1, Scope, reads in part:

'(a) These rules shall govern the hours of service and working conditions of the following groups of employees subject to the exceptions noted in Section (b) of this rule:

'Group 2—Other office, station and storehouse employees, such as  
\* \* \* station and warehouse watchmen.

**'EXCEPTIONS**

'(b) Except as otherwise provided in this rule and Rule 26, this agreement shall not apply to:

"The negotiations resulting in Clerks' Agreement No. 6 were extended over a period of about one year from November, 1935, to October 14, 1936. As each rule was discussed and tentatively agreed upon, the employees were given to understand that such rules were only tentatively agreed upon, and that final agreement as to any rule was dependent upon our ability to agree upon all rules, including excepted positions.

"Rule 1—Scope—Group 2—was not even tentatively agreed to with the omission of the words '(except those with police authority)' until September 10, 1936, and then only tentatively agreed to with the above stated understanding that final agreement on this rule was dependent upon agreement on other rules including excepted positions.

"Agreement covering excepted positions and other rules was tentatively reached in the latter part of September and first part of October, 1936; and final agreement on all rules, including Supplementary Agreement Covering Excepted Positions, was reached on October 14, 1936, when Agreement No. 6 and Supplementary Agreement Covering Excepted Positions and various Memorandum Agreements were signed. There is, therefore, no basis whatever for the employees' assertion that the management agreed to include station and warehouse watchmen with police authority under the scope rule and other rules of Agreement No. 6, when the facts of the matter are as stated above that the management did not agree to the Scope Rule—Group 2—as incorporated in Agreement No. 6 until agreement had been reached that all positions in the entire department of the Chief Special Agent were excepted.

"It is the Carrier's position that the signed agreements speak for themselves and that Rule 1 (b), sub-section 3, and Supplementary Agreement Covering Excepted Positions specifically declare each and every position in the entire department of the Chief Special Agent is an excepted position.

"There is no basis whatever for the employees' claim in this case and it should be denied."

There is in evidence an agreement between the parties bearing effective date of November 16, 1936, from which the hereinbefore quoted rules are cited.

**OPINION OF BOARD:** The dispute in this case is the outgrowth of a controversy that existed when the prevailing agreements were negotiated and which was not settled with sufficient satisfaction to put an end to the controversy.

The contractual relations between the parties to this dispute are covered by two agreements. One we shall designate as the General Agreement and the other Supplementary Agreement covering excepted positions. During negotiation of the agreements the Brotherhood insisted that Paragraph (a) of the Scope Rule of the General Agreement should include "office, station and warehouse watchmen." Carrier insisted upon adding after the above designation the qualifying clause "except those with police authority." After months of negotiation the words "station and warehouse watchmen" were included in Paragraph (a) of the Scope Rule and no qualifying clause immediately following their designation was used.

Paragraph (b) of the Scope Rule enumerates a long list of excepted positions that otherwise would have been included under Paragraph (a) of the Scope Rule. Among the list are the following:

"3—Employees holding excepted positions covered by Supplementary Agreement between the parties hereto, which is on file with the Management and General Chairman, and any additional excepted positions that may be subsequently agreed to or provided in Section (c) of this rule."

The General Agreement and the Supplementary Agreement were executed simultaneously and both became effective on the same day. The Supplementary Agreement included among the excepted positions:

"Chief Special Agent—Entire Department."

The parties agree that throughout the long negotiations which led to the final inclusion of "station and warehouse watchmen" in the Scope Rule with no qualifying clause the parties were all aware that all watchmen covered by Paragraph (a) of the Scope Rule of the General Agreement were clothed with police authority and all occupied positions in the Chief Special Agent's department. The Brotherhood contends that because of this fact, Paragraph (a) of the Scope Rule of the General Agreement takes precedence over Paragraph (b)-3 of the same rule and over the Supplementary Agreement, wherein the positions in question are excepted from the General Agreement.

The Board is unable to agree with this contention of the Brotherhood. The very purpose of exceptions is to take out from under an agreement positions that otherwise would be included. That is exactly what was done in this case and when the Brotherhood agreed to except the Chief Special Agent's entire department with full knowledge that all watchmen covered by Paragraph (a) of the Scope Rule of the General Agreement were in his department, it must be charged with full knowledge of the effect of the exception. This becomes more conclusive when the nature of the controversy regarding the inclusion of this class of employees in Paragraph (a) of the Scope Rule is considered. The record does not show that the Brotherhood ever objected to the inclusion of the employees involved in this dispute, who are in the Special Agent's department, among the exceptions in the Supplementary Agreement. The controversy was whether Paragraph (a) of the Scope Rule should include some qualifying clause, such as "except those with police authority." The effect of this qualifying clause would have been to remove from the scope rule of the agreement other watchmen that may in the future be covered by the agreement. There is nothing in the record to show that such was not the understanding of the parties at the time the agreements were executed. It is well known to everyone familiar with collective bargaining agreements that such agreements frequently include positions that are nonexistent when the agreements are executed.

Conceding that the positions in question should be included within the scope rule of the agreement, this Board has no jurisdiction over such a dispute. The claim must be denied.

**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 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 claim should be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 28th day of June, 1939.