

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

**THE SALT LAKE CITY UNION DEPOT AND
RAILROAD COMPANY**

STATEMENT OF CLAIM: "(1) Claim of the employees that position of Passenger Director, Salt Lake City Union Depot & Railroad Co. be bulletined and filled in accordance with scheduled rules.

"(2) Claim of the employees that senior qualified employee be reimbursed for any monetary loss sustained on account of the failure of the Carrier to bulletin and fill the position of Passenger Director in accordance with agreement rules."

JOINT STATEMENT OF FACTS: "On July 1, 1935, position of Passenger Director at Salt Lake City Union Depot & Railroad Co. was established at rate of \$125.00 per month, which position was not bulletined. The organization requested the bulletining of this position, which request was refused.

"Effective Nov. 4, 1935, position of Passenger Director was abolished. Effective Dec. 11, 1935, position of Head Usher was created at monthly salary of \$91.84, which position was not bulletined.

"Effective Feb. 4, 1936, position of Head Usher was abolished and former position as Passenger Director, rate \$125.00 per month was reestablished and was not bulletined.

"It is agreed by both parties to this dispute that the Denver & Rio Grande Western agreement applies to the Salt Lake City Union Depot and Railroad Co."

POSITION OF EMPLOYEES: "Employees contend that the existing agreement does not permit the establishment of an excepted position without negotiations.

"Rule 1 of the Clerks' Schedule sets out list of exceptions and position of Passenger Director is not included under such exceptions.

"If the Carrier desired to establish an excepted position, under the rules, paragraph 'D' of Rule 1 provides an opportunity to open negotiations with the Organization with the view of establishing the status of any new position. Scope Rule of the agreement provides:

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

coming under the scope of the Clerks' Agreement be compensated the difference between the rate of position occupied and the Passenger Director's daily rate of \$4.90, retroactive to July 1st, 1935.

"Employees further request that the relief clerk who has been deprived of the opportunity to relieve the position of Passenger Director one day each week, be compensated an additional day's pay at rate of \$4.90 per day for each week he did not receive six days work or pay, same to be retroactive July 1st, 1935."

POSITION OF CARRIER: "For many years prior to May 16, 1933, there was in effect at the Salt Lake City Union Depot the position of Depot Master. When the incumbent of this position passed on—May 16, 1933, the job was not filled.

"The need for more station supervision developed and on July 1, 1935, a temporary position of Passenger Director was established at a rate of \$125.00 per month, and Mr. R. R. Merrick, who had been employed as Usher in the Union Depot since October 11, 1918, or approximately seventeen years, was placed in the job. November 3, 1935, the position of Passenger Director was abolished and Mr. Merrick returned to the position he formerly held as Usher.

"December 11, 1935, the position of Head Usher was established at a rate of \$91.84 per month and Mr. Merrick was given this position. February 4, 1936, the position of Passenger Director at the rate of \$125.00 per month was restored and Mr. Merrick was placed thereon. Effective June 16, 1937, the position was reclassified as Depot Master and the rate made \$170.00 per month. On August 1, 1937, the rate was increased to \$180.00 per month.

"During the period October 11, 1918, to May 16, 1933, Mr. Merrick acted as Depot Master whenever the regular occupant of the job was on leave of absence—one leave of absence being rather extensive. There were also one or two instances during this period when he acted as Night Depot Master with that title.

"Mr. Merrick although he entered service as an Usher in our Salt Lake Union Depot, October 11, 1918, did not hold any seniority rights under the provisions of the Clerks' Agreement. His pay as an Usher was \$41.84 per month, exclusive of tips, and by reason of his long length of service around the depot, together with the experience he obtained while acting as Night Depot Master and substituting for the Day Depot Master, he was the most suitable and best qualified man for the position.

"The Depot Master at Salt Lake has supervision over the terminal which includes among his other duties looking after passengers and passenger trains, supervision over baggage, heating plant, janitor and yard forces, and keeping trespassers from the station building and grounds. Neither the job of Passenger Director, Head Usher, nor Depot Master has ever been included in the scope rule of the D&RGW clerks' schedule, which by agreement is applicable to clerical forces employed by the Salt Lake Union Depot Co. Furthermore, the clerks' organization up to the time the instant case was presented has so far as our records indicate never attempted to legislate for these three jobs.

"The Carrier contends the attempt of the clerks organization in this case to include the positions of Passenger Director, Head Usher, or Depot Master as coming within the scope of their agreement is not justified by any rule in the agreement. The jobs of Passenger Director, Head Usher, or Depot Master are purely supervisory and are, therefore, outside the provisions of the Clerks' Agreement. The Carrier further contends it has the right to appoint whom it deems to be best qualified to supervisory positions which are not covered by any working agreement, as it did in the instant case."

OPINION OF BOARD: In addition to the information contained in the

Joint Statement of Facts, the record shows that for many years prior to May 16, 1933, a position designated as Depot Master, rate \$200.71 per month, existed at the Salt Lake City Union Depot. This position carried supervisory duties and was in direct charge of all employes in the ticket office, baggage room, and about the station. The incumbent of this position died on May 16, 1933, and the position was not filled.

It is further shown that on June 16, 1937, the Passenger Director position here in question was reclassified as Depot Master, rate \$170.00 per month, which rate was increased to \$180.00 per month effective August 1, 1937.

The employes contend that the duties of the former Passenger Director, Head Usher, and the present Depot Master are not supervisory, confidential, nor of an official nature, and that these positions should have been bulletined and assigned to the senior qualified employe holding seniority rights under the scope of the Clerks' Agreement.

The carrier contends that the attempt of the organization to include the positions of Passenger Director, Head Usher, and Depot Master in the scope of the Clerks' Agreement is not justified by any rule of the agreement, that the duties of the position were and are supervisory, and that they are therefore outside of the provisions of the Clerks' Agreement.

The dispute involves the duties and responsibilities assigned to the former Passenger Director, the Head Usher, and the present Depot Master. In view of the conflicting statements on this question, the parties should be required to jointly ascertain and supply the Board with the following information:

- (1) Duties of the Depot Master prior to May 16, 1933;
- (2) Duties of the Passenger Director and/or Head Usher when those positions existed between July 1, 1935 and June 16, 1937;
- (3) Duties of the Depot Master since June 16, 1937.

Therefore, the case should be remanded for development of the information listed above.

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 the case will be remanded to the parties to supply the Board with the information requested.

AWARD

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1940.