

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

(a) The carrier violated the Clerks' Agreement by nominally abolishing the position of Chief Clerk to the Executive Vice President and assigning all of the duties of the Chief Clerk's position to an employee not covered by the Clerks' Agreement, also

(b) Claim for all losses sustained by all employees involved in, or affected by, this agreement violation from May 30, 1940 until the violation is corrected."

JOINT STATEMENT OF FACTS: "On May 30, 1940 the position of Chief Clerk to the Executive Vice President, covered by the Clerks' Agreement, became vacant due to the incumbent having been promoted to an official position.

"The carrier failed to bulletin the position when it became vacant, and, when requested to do so, advised that the position had been abolished and the duties assigned to Mr. J. E. Anderson, Assistant to the Executive Vice President, an employee not covered by the Clerks' Agreement."

POSITION OF EMPLOYES: "The following rules of the Clerks' Agreement were in effect on the date the position became vacant and are applicable in this case:

Rule 1. Employees Affected

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

'(1) Clerks.

'(2) Other office and station employees, such as office boys, messengers, train announcers, gatemen, checkers, baggage and parcel room employees, train and engine crew callers, operators of certain office or station devices, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors.

President, a position covered by the Clerks' Agreement, was nominally abolished on May 30, 1940 and all of the duties assigned to an employe not covered by the Clerks' Agreement (See Exhibit A).

"Your Honorable Board has passed upon the subject involved in this dispute in numerous awards and we are attaching hereto as Exhibit B excerpts from several awards of this Board that are particularly applicable in this instant case.

"Employes have shown that a position covered by the Clerks' Agreement was nominally abolished on May 30, 1940 and all of the duties of that position assigned to an employe who holds no rights under and is not covered by the Clerks' Agreement, all of which is in violation of the Agreement. In view of all the facts and circumstances in this case, it is our request that your Honorable Board sustain our claim."

POSITION OF CARRIER: "The employe with the title of Chief Clerk to the Executive Vice President whose position was abolished on May 30, 1940, was not in reality a chief clerk although he carried that title. He was really a representative of the Executive Vice President; his principal duty being that of representing him in accompanying special parties when traveling over our railroad, frequently making trips as far as Mexico City with said parties; in fact, the majority of his work was outside of the office. His office work consisted principally of dictating the more important letters which were handled in his absence by the Assistant to the Executive Vice President and also the signing of vouchers for the Executive Vice President, which duty was performed by both the Assistant to the Executive Vice President and an employe in the same office holding the position of C. E. Accountant.

"It is the contention of the Carrier that due to the duties of the employe who had the title of Chief Clerk that the agreement with the Clerks' Organization was not violated when the position was abolished."

OPINION OF BOARD: That the position of Chief Clerk to the Executive Vice President comes within the scope of the agreement effective April 1, 1939 is admitted. Indeed it is expressly designated by the parties as such—in that it is listed as one of the positions "excepted from the assignment, promotion, displacement and hours of service rules of this agreement."

When Mr. Fox was promoted to an official position the Carrier had the right, under Rule 27 (b), to fill the position with one "other than employes covered by these rules." In other words, the Carrier had an unrestricted right of selection of a successor to Mr. Fox. Rule 27 (b), however, cannot be construed as according the Carrier the right of abolishing the position so long as the duties pertaining thereto continued to exist. Awards 450, 631, 1122, and 1125.

That the duties of the position continued to exist cannot be denied by the Carrier, for, on August 10, 1940, its General Manager wrote the General Chairman of the Brotherhood as follows: "This will confirm the statement of Mr. Kelly that the Chief Clerk's duties have been taken over by Mr. Anderson. . . ." In view of this admission the action of the Carrier, in abolishing the position, was a clear violation of the agreement effective April 1, 1939. While, in selecting a successor to Mr. Fox it was not confined to employes within the scope of the agreement, the Carrier could not, under the pretext of abolishing the position, assign the duties appertaining to it to an employe holding an official position and who, for that reason, is not, and cannot be brought, within the terms of the scope rule of the agreement. For, it is the plain purpose of Rule 27 (b) automatically to bring the person selected for the position within the scope of the agreement if he is not already under it.

The Carrier contends that the position was removed from the scope of the agreement effective November 1, 1940. With this contention we cannot agree. The only change made by that agreement affecting the situation was to eliminate the excepted list provided for in the scope rule of the agreement effective April 1, 1939. The consequence of this was to limit the Carrier's right of selection to employees within the scope of the new agreement. The Carrier itself placed this construction on the agreement effective November 1, 1940 by bulletining the position pursuant to the provisions of Rule 9.

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 carrier violated the agreement effective April 1, 1939; that such violation continued through as a violation of the agreement effective November 1, 1940 until the position was bulletined pursuant to the provisions of Rule 9 of the latter agreement; that the carrier make reparation to employees affected by the violation of the agreements.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of December, 1941.