

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the position created by the carrier and assigned the title of "Assistant Station Master," hereinafter described and identified, shall be rated, bulletined and assigned under the terms of existing Agreement; and

That the employees involved in or affected by the carrier's action in failing to so rate, bulletin and assign said position be compensated in full for monetary loss resulting therefrom, effective from March 20, 1941, to the date position may eventually be properly rated, bulletined and assigned.

EMPLOYEES' STATEMENT OF FACTS: There are in effect between the parties two Agreements governing the hours of service and working conditions of employees of the carrier represented by the Organization party hereto, one of which, effective April 5, 1939, covers Ushers (Redcaps) employed at the Union Station, Kansas City, Missouri, and the other, effective February 17, 1936, which covers other employees of the carrier represented by the Brotherhood commonly known as the clerical, office, station and stores craft or class.

On or about June 12, 1940, the carrier established a position in its Passenger Department under the title of "Assistant Station Master," rate of pay, \$160.00 per month, assigned hours, 12 o'clock Midnight to 9:00 A. M., with two rest days. Subsequently the hours of assignment were changed to 10:00 P. M.-7:00 A. M. Position was assigned to F. I. Baughn, who was prior thereto employed as an Usher. The position was not bulletined and was treated as a position unaffected by the terms of the Agreements above referred to.

Positions in the Passenger Department under the jurisdiction of the Station Master covered by the scope of the Agreement of February 17, 1936, are as follows:

One Chief Clerk,	\$185.00	per month.
One Clerk,	5.00	" day.
Three Usher Captains,	5.365	" "
Seven Gatemen,	5.17	" "
Twenty-four Janitors,	.48½¢	per hour.
Four Elevator Operators,	.45¼¢	" "
Four Paint Washers,	.51½¢	" "
One Window Washer,	.57½¢	" "

The scope of the Agreement of April 5, 1939, is limited to Ushers (Red Caps), numbering approximately 80 employees.

other employe under the scope of the Agreement 'commonly' performed the duties now performed by the incumbent of the position in question is not a fact. No work was taken away from employes coming under the scope of the Agreement by the re-establishment of the position, therefore we decline the claim as being without merit or foundation."

The Board will note that the position in question was not re-established as an "Excepted Position," as Assistant Stationmasters are not covered by the Agreement or mentioned therein. It is rather a position entirely excluded from the Agreement.

As to the Organization's claim that the Assistant Stationmaster on the Third Shift is performing work such as Usher Captain, Gateman, and Clerk, we desire to emphasize the fact that the duties of an Assistant Stationmaster involve incidental work of many different kinds and of great variety. Merely because the Assistant Stationmaster has authority over the ushers it does not place him in the category of Usher Captain, as Usher Captains only have limited supervision over ushers, and that to the extent of mere assignments of them to various trains and locations. Incidental to the duties of the Assistant Stationmaster there are occasions when he personally looks after the directing of passengers to a particular train thru the gates. As to the so-called clerical work which it is claimed this Assistant Stationmaster performs, this work consists of stocking usher tags; this is in reality a manual operation and requires no clerical knowledge, and the average consumption of time in performing it is about 30 minutes to 1 hour during the entire shift.

The Carrier asserts that the duties of the Assistant Stationmaster are neither that of an Usher Captain, a Gateman, nor a Clerk. His duties are not in any way comparable with the duties of any one of these three classifications, and his position is identical with the positions of the Assistant Stationmasters on the other two shifts.

The Carrier respectfully asks the Board to deny this unwarranted claim and cites as authority in support of its position recent awards by this Division of the Board. These awards are Nos. 1078, 1435, 1484, 1519, 1554, 1567, and 1593.

OPINION OF BOARD: The question for resolution before us is: Is the position of "Assistant Station Master" which was re-established by the Carrier at the Kansas City Terminal on June 12, 1940, covered by the agreements before us?

It is admitted that it is not an "excepted position" but the Carrier contends as has been noted in its presentation that the position is an "excluded" one and a study of the history of the dispute and acquiescence by the employes in the position of the Carrier as to these station masters convinces us that it was never intended that they should be covered. For example, as late as Mar. 3, 1937, the employes agreed as follows: "It is mutually agreed that employes, who have been promoted from positions covered by the agreement * * * to positions listed below* * *"

* * * * *

"Assistant Station Masters Passenger * * *
shall retain their seniority rights."

This has been the consistent attitude of the employes on this property until this claim was filed.

But the employes contend now, that, because some of the work done by this particular third trick station master is similar to that covered by the agreement, this job is covered by the agreement.

It must be conceded that there is logic in the contention, but it is not controlling. A number of awards of this Division have specifically stated that

it is not the title given to a position that determines its classification, but none of those awards involved a station master's position. On the other hand, there is a connotation in this title as to the nature of the duties that cannot be ignored. The title "Station Master" connotes supervision and control, and to a lesser extent the words "Assistant Station Master" connotes the same. Anyone at all familiar with the operation and administration of the larger union stations in America, and the Kansas City Terminal is one of them, knows that the position of Station Master is of a definite type or nature.

Then, as Referee Wolfe said in Award No. 1314, "Functions which are normal and incident to it may be added or taken away without changing the nature or type of position. As long as the functions are 'in character,' the position is not changed, volume of work itself being only a secondary criterion, although there may be cases where a difference in amount or degree may mean a difference in kind."

The meaning of the last clause of the above quotation has been incorporated in a number of Clerks' Agreements with a provision that persons performing four hours or more of clerical work in a day are by virtue of that fact under the agreement. But we have no such provision in the controlling agreements before us, and even if there were the employee involved would not be covered because Exhibit A shows that he never did perform four hours of work that is covered by the agreement. As we read the Exhibit, we think it shows that the work done was that ordinarily done by such an employee and definitely of a supervisory nature.

The conclusion reached finds support in Award No. 1435, even though there the claim was based principally on the intermittent service rule, but the arguments made in support of the claim differ in no substantial degree from the arguments made here, and the award could be taken as the award in this case with even greater propriety because of the known importance of the Kansas City Terminal.

Our conclusion, therefore, is that the agreement was not violated and the claim should 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 Carrier did not violate the agreements and 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 10th day of August, 1942.