

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

(M. P. Callaway, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement when it failed and refuses to fill the position of Baggage Agent, Savannah Passenger Station, Savannah, Georgia, in accordance with provisions of the Clerks' Agreement, and

(1) That said position shall now be bulletined to employees in the seniority district of the Superintendent's office roster and be assigned to the senior qualified applicant or otherwise filled in accordance with rules of the Clerks' Agreement, and

(2) That all employees adversely affected by the carrier's refusal to properly fill the position shall be compensated for all wage losses incurred retroactive to July 2, 1941, date of first formal protest of incorrect assignment.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to July 2, 1941 there had existed a position in Savannah Passenger Station, Savannah, Ga., identified as "Baggage Agent" and the particulars governing this position were as follows:

Title: Baggage Agent

Salary: \$190.40 (now \$214.74)

Duties: General Supervision of and responsibility for performance of duties of Red Caps, Maids, Cleaners, and Porters (Baggage and Mail). Keeping records and reports of baggage, railroad mail, company material, etc., moving into and out of Savannah Passenger Station. Performing such clerical work as is necessary in connection with the above.

On or about July 2, 1941, the incumbent for many years, Mr. C. H. Gogle became ill, and the position was filled temporarily by a Mr. Sexton, a Trainman, an employe outside the scope and coverage of the Clerks' Agreement and when protest was registered, one of the clerks in the office of the Superintendent, Savannah Division, was assigned, without bulletining to the position temporarily, the carrier then making the statement that the Company did not recognize the position as being under the Clerks' Agreement. Clerk A. T. Langston, of the Superintendent's Savannah Division Office Seniority District, thereafter occupied the position most of the time from time of protest until December 16, 1941, when a Mr. McKnight, another employe not covered by the Clerks' Agreement was appointed to the position, and this arrangement existed substantially and with fair regularity until March 1, 1942, when Mr.

Rule 5 is the Promotion Rule and reads:

"Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability, the employing officer to be the judge, subject to appeal; fitness and ability being sufficient, seniority shall prevail. This not to apply to excepted positions, Rule 1, paragraph (a)."

Since the position in question is not included in the scope rule of the Clerks' or shown on their seniority rosters, the above rule has not been violated.

The carrier further points out that it has always been recognized that this position is in reality that of Station Master rather than Baggage Agent, as he has supervision over the station and controls the arrival and departure of trains within the station limits.

The carrier also wishes to advise the Board that since the Claim of the Brotherhood of Railway Clerks' was filed, it is in receipt of similar claim from the Order of Railroad Telegraphers, conference on which has not yet been held, or final decision made, and it now appears that this claim will also develop into a jurisdictional dispute between these two organizations.

It is desired to further advise the Board that the position has been awarded to employees coming within the scope of the agreement with the Order of Railway Telegraphers since the retirement of Mr. C. H. Gugel on January 1, 1942. The position was made by appointment, and not by bulletin.

OPINION OF BOARD: This dispute turns on whether or not the position of Baggage Agent, Savannah Station, Savannah, Georgia, is covered by the current agreement between the parties.

The rules relied upon by the petitioners to answer that question are Rules 1 and 3. They are as follows:

"Rule 1. **EMPLOYEES AFFECTED:**—These rules shall govern the hours of service and working conditions of the following employees, subject to exceptions noted below: Clerks, Warehouse Foremen, Office Boys, Messengers, Chore Boys, Checkers, Baggage and Parcel Room Clerks, Train and Engine Crew Callers, and Operators of Office and Station Equipment Devices.

"Rule 1 (a) Revised—Effective October 1, 1934.

"**EXCEPTIONS:** This agreement not to apply to those positions appearing on Personal Office Staff list as of October 1, 1934, insofar as hours of service and seniority are concerned, subject to appeal of duly accredited representatives of the Organization, with final appeal to the Chief Operating Officer of the Railway. Any additions to the roster of Personal Office Staff as of October 1, 1934, to be made only by agreement between the Railway and the Organization.

"(b) Where vacancies occur in the positions of station agents, freight agents, ticket agents, yardmasters, or in any of the positions excepted in paragraph (a) of this rule, employees covered by this Agreement will be given an opportunity to apply for such positions and equal consideration with other employees when filling them—where it is not specifically provided in schedules with other employees that such other employees are to have the exclusive rights to these positions. The appointing officer shall be the sole judge of appointments to vacancies referred to in this rule."

"Rule 3. **DEFINITION OF CLERK:**—All employees who are required to do clerical work or office duties of any nature in any department, station or office shall be considered clerks within the meaning of this schedule."

In Rule 1, the phrase "Baggage and Parcel Room Clerks" is found. Those words standing alone are not sufficient to include the position of Baggage

Agent. A man may be a Baggage Clerk, and yet not be a Baggage Agent. Nor does the fact, standing alone, that he does do such work make him a Clerk under Rule 3. It is true this rule does say all employes who do clerical work shall be considered Clerks within the meaning of this schedule. This is a classification rule. It is nothing more than a definition of a Clerk, to differentiate a Clerk from other positions covered by the agreement.

To rule otherwise, this Board would be forced to rule that every employe of this Carrier who does any clerical work would be covered by the agreement. "There are few, if any, employes of a Carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties." See Awards Nos. 806 and 1418. This rule does not apply to positions outside the agreement.

The title given to a position alone does not determine whether it comes under the agreement, but rather that question is determined by the duties performed by the occupant of the position.

The duties of the Baggage Agent in question are supervision of and responsibility for performance of duties of Red Caps, Maids, Cleaners, and Porters (Baggage and Mail), and keeping records and reports of baggage, railroad mail, company material, etc., moving into and out of Savannah Passenger Station. He, also, has supervision over the station, and controls the arrival and departure of trains within the station limits. This Board is of the opinion that under the duties performed by the occupant of this position, the Carrier was justified in considering this an official position and one not covered by any agreement.

Mr. C. H. Gugle held the position of Baggage Agent at Savannah Passenger Station from the year 1898 to the year 1942. He participated in the Clerks' representation elections held by the National Mediation Board in 1936, Case R-234, and again in the election of 1940, Case R-632. The Mediator was provided with copies of the payrolls. This list of eligible voters was compiled by the Mediator and in the last election, the list was agreed to by him and representatives of the Railway and Steamship Clerks. The Carrier had no part in it. The fact that the Mediation Board proclaimed Mr. Gugle as an eligible voter would not be binding on the Carrier. It had no voice in the election.

The Board holds there is nothing in the express language of the agreement, the duties performed by the occupant of the position, or the conduct of the parties to bring this position under the agreement.

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 employes involved in this dispute are respectively carrier and employes 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

There was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.