

Award No. 2279
Docket No. CL-2264

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood of Railway Clerks that positions at Stockton Yard with hours 4:00 P. M., to Midnight and 12:01 to 8:00 A. M., now classified as Train Desk Clerks, shall be classified, rated, bulletined and assigned as Chief Clerk at the rate of \$6.65 per day effective June 27, 1941 (\$7.45 since December 1, 1941), and that all employees adversely affected by reason of failure of Carrier properly to classify and rate these positions be compensated for monetary loss sustained since June 27, 1941.

EMPLOYEES' STATEMENT OF FACTS: In response to a request for an increase in pay and an adjustment of the wages of certain clerical positions, an agreement was entered into, effective January 1, 1927, between this Brotherhood and the Western Pacific Railroad, setting rates of pay for all positions coming within the scope of the Clerks' Agreement. The rates of pay agreed upon were in consideration of the duties then assigned to and constituting the substance of certain positions. Statements of duties were furnished by the various officers and agents of the Railroad. The duties of the following positions at Stockton were:

"Chief Clerk. General supervisory capacity, also assists on train desk work, various reports to make out and works in conjunction with Yardmaster."

"1st Trick Train Desk—Handle all train desk work, write up yard check, handle interchange corrections and various other minor detail work that may come up and what Chief Clerk assigns him."

"2nd Trick Train Desk—Handle all train desk work, write up yard check, also any detail work (minor) assigned to him by Chief Clerk."

"3rd Trick Train Desk—Handle all train desk work and any other minor work in office when he is not occupied with his own work, also checks other minor detail work that may be assigned to him by the Yardmaster."

Under date of June 27, 1941 the following was issued by yardmaster at Stockton:

"6/27/41 3:00 P. M.

All Interchange Clerks and Crew Callers on duty 4:00 P. M. to Midnight and 12:01 A. M. to 8:00 A. M., are under direct supervision of Train Desk Clerk and will work as desk clerk on duty directs.

/s/ J. G. Nolte, YM"

the matter up with the yardmaster on duty at the time to have the situation straightened out, the train desk clerk took his troubles up with the chief clerk, who issued instructions for the purpose of assuring to the train desk clerk such cooperation as necessary to insure efficient functioning of the office.

An effort is being made to use these instructions, which were issued solely in the interest of efficiency and to prevent quarreling among employes on the second and third shifts, as a means to force Carrier to create position of chief clerk on each shift at higher rate of pay than that of train desk clerk.

POSITION OF CARRIER: The work on the night in question, which resulted in the chief clerk's issuing the following instructions over the name of the day yardmaster:

"All Interchange Clerks and Crew Callers on duty 4:00 P. M. to Midnight and 12:01 A. M. to 8:00 A. M. are under direct supervision of Train Desk Clerk and will work as desk clerk on duty directs."

was handled no differently than was and had been the custom for many years. The clerical work incident to the movement of traffic through Stockton Yard centers around the train desk clerk, and it is absolutely essential that he have the utmost cooperation of all employes on duty with him. Certainly action to accomplish this purpose does not constitute the establishment of position of chief clerk. The work performed and the responsibilities placed upon the train desk clerk are not comparable by any stretch of the imagination to those of the chief clerk on duty during the day shift.

Carrier's statement of facts and its position, as described above, relates to the situation existing under normal conditions, and under such conditions, there is absolutely no justification or reason for the establishment of the position of chief clerk on either the second or third shift. There is a yardmaster on duty and in charge of the terminal at all times during each 24-hour period and the general clerical problems, procedure, etc., are directed by the chief clerk.

As evidence of the fact that Carrier provides ample supervisory force, in so far as Stockton Yard is concerned, this force has been materially increased since Pearl Harbor. As the business and the demands of the government increased, the official and supervisory force has increased until at present there are:

- 1 terminal trainmaster, plus the district trainmaster who formerly was in charge of the yard, in addition to about 200 miles of main and branch lines;
- 1 assistant terminal trainmaster;
- 3 yardmasters, one on each shift;
- 4 assistant yardmasters; and
- 3 chief clerks, one on each shift.

Carrier is free to readjust downward its official staff if and when decreasing business justifies, and it should be equally free to take such action with its other supervisory force, such as chief yard clerks. A tremendous volume of traffic is now moving because of the national emergency, necessitating forces far in excess of the personnel required to handle peacetime transportation. While there is at the moment a necessity for three shifts of chief clerks in the yard office at Stockton, there is no such necessity in normal periods.

OPINION OF BOARD: On June 27, 1941, the Carrier had in its employ at its Stockton Yard a Chief Clerk who was assigned to work from 8:00 A. M. to 4:00 P. M., and two Train Desk Clerks, assigned successively to first and second tricks, the first working from 4:00 P. M. to midnight, and the second from 12:01 A. M. to 8:00 A. M., and this schedule of work had existed for several years. At that time the rate of pay for the Chief Clerk was \$7.45 per day, and that of the Train Desk Clerks \$6.70 per day. The men work under a wage agreement effective January 1, 1927. Interchange Clerks and Crew Callers also worked on these shifts.

The duties assigned to positions of Chief Clerk and Train Desk Clerks were as follows:

"Chief Clerk. General supervisory capacity, also assists on train desk work, various reports to make out and works in conjunction with Yardmaster."

"1st Trick Train Desk—Handle all train desk work, write up yard check, handle interchange corrections and various other minor detail work that may come up and what Chief Clerk assigns him."

"2nd Trick Train Desk—Handle all train desk work, write up yard check, also any detail work (minor) assigned to him by Chief Clerk."

Yardmasters worked in the Stockton Yard at all times during a twenty-four hour day, and the Chief Clerk, during his eight-hour tour of duty, worked in conjunction with the Yardmaster, and exercised general supervisory powers, including assignments of work to the Train Desk Clerks. Shortly before June 27, 1941, one of the Train Desk Clerks requested an Interchange Clerk to assist him in preparing bills for a train, and was met with the response: "Who are you to tell me what to do? You are only the Train Desk Clerk here." The Train Desk Clerk reported the matter to the Chief Clerk, and he, in the name of the Yardmaster, issued the following instructions on June 27, 1941:

"All Interchange Clerks and Crew Callers on duty 4:00 P. M. to midnight and 12:01 A. M. to 8:00 A. M. are under the direct supervision of Train Desk Clerks and will work as Desk Clerk on duty directs."

It is the contention of the petitioner that these instructions had the effect of creating a new position of Chief Clerk for both the first and second tricks, elevated each of the two Train Desk Clerks to a position at least equivalent to that of Chief Clerk, and that they should thereafter be paid as such. The position of the Carrier is that the instructions were issued "solely in the interest of efficiency and to prevent quarreling among employees," and did not, in fact, make any change in the powers, duties and responsibilities of the Train Desk Clerks, as they had been customarily exercised before that time.

The petitioner relies on Rules Nos. 6, 9 and 10 of the current agreement, effective October 1, 1930. These rules read:

"Rule 6. An established position shall not be discontinued and a new one created under a different title covering relatively the same class of work for the purpose or with the effect of reducing the rate of pay or evading the application of these rules."

"Rule 9. The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

"Rule 10. Employees assigned temporarily to higher rated positions shall receive the higher rate. Employees assigned temporarily to lower rated positions shall not have their rates reduced."

"A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position, whether the regular occupant is absent or present; merely assisting a higher rated employee during a temporary increase in the volume of the work does not constitute a temporary assignment."

It is clear that prior to June 27, 1941, Train Desk Clerks worked under the general direction of the Chief Clerk. The definition of their duties is evidence of that fact. There is nothing in the record from which we may conclude that there was any change in that relationship after June 27. It is arguable, we think, that prior to that date they gave directions to those filling inferior positions, such as Interchange Clerk and Crew Callers. If they did not assume the right to do so, why was the direction or request which gave

rise to this dispute given or made? Only when one Interchange Clerk questioned their right to do so was the matter referred to a superior. What the Desk Clerk did was nothing more than a request that he be given authority to require assistance from employees occupying inferior positions. The Train Desk Clerk who took up the matter with the Chief Clerk must have thought that his position carried with it the right of such direction, else he would not have made the complaint. Furthermore, what he asked for was to relieve himself of work he would otherwise have to do, and not for additional work or responsibility.

We have difficulty in reaching the conclusion that a request for an authority which would tend to increase efficiency, and lessen the work of the party making the request, should now be used as the basis of a claim that the granting of the request had the effect of raising his rank and increasing his pay. Had the Carrier upheld the contention of the Interchange Clerk, no question of any change in the positions of Train Desk Clerks could have arisen. Can the granting of the request, in the circumstances, change the situation? We think not.

The instructions given on June 27, 1941, did not vest in Train Desk Clerks the full powers of a Chief Clerk. It did nothing more than to place two types of employees under their supervision and subject to their direction during a limited period of time. The powers of the Chief Clerk were general supervisory powers, and covered not only Interchange Clerks and Crew Callers, but Train Desk Clerks as well. It is interesting to note that later, when the traffic demands called for an increase of force, additional Chief Clerks were added to the force, and also additional Train Desk Clerks. At all times the two positions seem to have been considered and treated as separate and distinct.

On the whole we do not think that the instructions given on June 27, 1941, operated to do more than put into effect, by direct order, that which had been the practice theretofore; and we do not think that they operated, in effect, or directly, to change the duties or responsibilities of the Train Desk Clerks, in such a way as to entitle them to the rating and pay of a Chief Clerk. The claim will 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 instructions of the Yardmaster at Stockton Yard, dated June 27, 1941, did not make such change in the duties of Train Desk Clerks working on the two shifts mentioned therein, as to entitle them to the rating and pay of a Chief Clerk.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of August, 1943.