

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henri A. Burque, 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 position of Office Manager in the General Auditor's Office at Houston, Texas, is not included in paragraph (c) of Rule 7 of the current agreement between the Carrier and the Brotherhood. And

(b) Claim that the Carrier violated the Clerks' Agreement by refusing to assign Mr. H. L. Morgan, the senior qualified bidder. And

(c) Claim that all employees involved in or affected by the Agreement violations be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: Your Honorable Board is thoroughly conversant with the history of the position here involved. The entire back-ground was presented to you in Docket CL-1619, which resulted in Award No. 1673. Following Award No. 1673, it became necessary for your Honorable Board to interpret the award as indicated in Serial No. 39 of December 9, 1942.

On December 30, 1942, conference was held to discuss the application of Award No. 1673 and Interpretation No. 1 thereto. The Asst. Chief Personnel Officer called the General Chairman's attention to the Carrier's statement on page 4 of their letter March 2, 1942, addressed to Secretary Johnson of the Third Division. That statement reads as follows:

"If the carrier should find it necessary to recreate the position of Office Manager, which was abolished September 30, 1940, it would handle with the Committee with a view of reaching an agreement that the position would be placed under Section (c) of Rule 7, the same as it did in the case of the Trainmaster's Clerk."

The Asst. Chief Personnel Officer informed the General Chairman that he desired to enter into negotiations for the purpose of including the position of Office Manager in paragraph (c) of Rule 7. No agreement was reached at the conference of December 30, 1942.

OPINION OF BOARD: This case is the aftermath of Award 1673, CL-1619, wherein it is decided that the position of Office Manager in the Auditor's Office at Houston, Texas, was wrongfully discontinued, or abolished (which-ever wording one wishes to adopt), at the close of business September 30, 1940, and that it had to be restored as of October 1, 1940. The issue here presented is, was the restoration, because made only in January, 1943, made under the agreement in effect April 1, 1939, or was it made under the agreement in effect November 1, 1940, at least from that date on?

There can be no question but that for the month of October, 1940, the rules and agreement in force and effect April 1, 1939, govern. The 1939 agreement made this position an excepted one, meaning excepted from the application of certain rules of that agreement, one of which (the only one we are concerned with here) was the seniority provision.

On November 1, 1940, a new set of rules and agreements were adopted and the position of Office Manager at Houston was not mentioned therein; that is, was not included in the list of excepted positions. The employees contend that the position not being listed, included and excepted in Rule 7 (c) of the 1940 agreement, and being filled only in January, 1943, it now comes within and is covered by the general 1940 Scope Rule. The Carrier takes the opposite view and says it comes within and is governed by the exception to the general 1939 Scope Rule.

We rule the Carrier's position is the one to be adopted; that the position being restored as of October 1, 1940, the 1939 Agreement governs, and whether the position is listed or included in the 1940 Rule 7 (c) exception is immaterial. It remains a position, when filled, governed by the 1939 agreement. What may happen when the position, if in existence, is again filled, need not be considered here.

In view of the conclusion reached, it is unnecessary to consider and determine why the position was not included in the 1940 agreement, and whether it should be listed as an excepted position in Rule 7 (c) of the 1940 agreement, as contended by the Carrier. It is a well settled and consistently adopted principle of construction by this Board that we cannot add to nor subtract from, make or change any of the rules agreed upon. The Board interprets rules and agreements; it does not revise them.

There being no conflict in the agreement of 1940 with that of 1939 in respect to the position herein considered, it is unnecessary to compare them and decide whether the 1940 agreement supersedes the 1939 agreement. The 1940 agreement just does not cover, while the 1939 does, and it is under the latter agreement that the position is restored.

When the Carrier complied with Award 1673 in January, 1943, the seniority rule was disregarded, as well it could be under the 1939 Exception Agreement. The exception in the 1939 Agreement takes it out of the priority rule, so that there was no violation when the Carrier assigned the position to one junior to the claimant in point of service and seniority.

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 employee involved in this dispute are respectively carrier and employee 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 position of Office Manager in the General Auditor's Office at Houston, Texas, when restored, came within the exception to the Scope Rule of 1939.

AWARD

Claim (a), as worded and referring to Rule 7 (c) of the 1940 Agreement, is necessarily sustained.

Claim (b) denied.

Claim (c) is already sustained by Award 1673, Interpretation No. 1.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of October, 1943.