

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

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

(a) The Carrier violated the Clerks' Agreement when on December 16, 1942, it abolished the position of Chief Clerk to Division Freight Agent, Aurora, Illinois, and created new position of Commercial Agent in lieu thereof; and

(b) That the Carrier be required to restore the position of Chief Clerk to Division Freight Agent, Aurora, Illinois, and that John Pillatsch, former incumbent, be returned to said position and be paid all monetary loss sustained; and

(c) That all employees involved in or affected by this action of the Carrier be compensated for all monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: Effective July 1, 1942, a new agreement covering working conditions was signed by both representatives of this Carrier and the Clerks' Organization, subject to the provisions of the Railway Labor Act, as amended. Under the scope rule of this new agreement the Chief Clerk to the Division Freight Agent was covered thereby under Rule 2, Paragraph (b) and not subject to the following quoted rules 7, 10, 15 and 26 to 36, both inclusive. This would indicate that all other rules are applicable.

Rule 42 reads as follows:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

The Carrier's action in this dispute has taken the position (Chief Clerk to Division Freight Agent, Aurora, Illinois) completely out from the scope of the Clerks' Agreement for the reason that the work of the position has been assigned to a Commercial Agent, who is considered an official and not under the Clerks' Agreement.

The Selective Training and Service Act of 1940 enacted by Congress, amended and approved by the President of the United States on September 16th of that year provides that an employee returning from military service

OPINION OF BOARD: The issue here for determination is whether the position of Commercial Agent established by the Carrier at Aurora, Illinois, December 16, 1942, covers "relatively the same class of work" as that of Chief Clerk to Division Freight Agent at said point which was discontinued on said date, within the meaning of Rule 42 of the effective Agreement. If so, we shall have no concern with the Carrier's purpose in effecting said change, since everyone is presumed to intend the natural and logical consequences of his voluntary acts. Award 139.

There appears to be some confusion as to the burden of proof in this case, but we think the applicable rule may be simply stated. When an organization seeks to bring under an agreement a position that has not been so classified the burden is upon it to establish facts entitling it to that relief; but the carrier has the burden of establishing that it was warranted in supplanting a position under an Agreement with a so-called official position. Prior to the establishment of the position of Commercial Agent, the Chief Clerk was clearly within Rule 1 defining the scope of the Agreement and it must therefore be concluded that the burden is upon the Carrier to justify its action in the premises.

The Carrier asserts that the volume of business in the territory served by the Division Freight Agent at Aurora rendered necessary the employment of a Commercial Agent, and that "his duties and responsibilities are far beyond those of a Chief Clerk," but this does not suffice. The need for a Commercial Agent at said point is not controlling; the question here is whether the duties imposed upon that position cover relatively the same class of work formerly performed by the Chief Clerk. While the nature and extent of the Chief Clerk's services are not satisfactorily disclosed by the record, it may hardly be supposed that these diminished with an increased volume of business. On the contrary, it is inferable from the whole record that the Commercial Agent took over the functions of the Chief Clerk and, perhaps, assumed additional responsibilities. The title ascribed to the position is immaterial, and it must be concluded that the Carrier violated the Agreement.

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.

AWARD

Claim (a, b and c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.