

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the provisions of the Rules Agreement, effective May 1, 1942, including Rules 3-C-2 and 4-F-1, when it abolished six clerical positions, Reservation Bureau, Chicago, Illinois, effective July 1, 1946, and assigned the work to positions of Passenger Representative, held by employees who have no seniority standing.

(b) The positions should be restored and the incumbents of the abolished positions be returned to their former status and be paid for all monetary loss sustained on account of assigning work of the abolished positions to Gilbert Frasier and Charles Beagley who have no seniority standing under the Rules Agreement. (T-4)

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The claimants involved in this case are employees covered by the Scope of that Rules Agreement, holding Seniority rights in the seniority district of the Passenger Traffic Department, Western Region, and employed in the Reservation Bureau, Chicago, Illinois.

Effective July 1, 1946, six positions of clerk were abolished. Effective July 1, 1946, Mr. Charles Beagley, a Passenger Representative, was employed as a clerk, but allowed seniority standing as of June 16, 1946. He was again promoted, as of July 16, 1946, to a position of Passenger Representative. He, therefore, was used as a clerk for a period of two weeks.

Effective July 1, 1946, Mr. Gilbert Frasier, a Passenger Representative, was employed as a clerk, but allowed seniority standing as of June 16, 1946. He resigned as of August 15, 1946. He, therefore, was used as a clerk for a period of six weeks.

Positions of Passenger Representative and similar positions are considered as excepted or appointed positions.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

(Exhibits not Reproduced.)

OPINION OF BOARD: This claim by the Organization states that:

(a) The Carrier violated the provisions of the Rules Agreement, including Rule 3-C-2, when it assigned the work of abolished positions covered by the Clerks' Agreement to positions held by employees having no seniority standing under the Clerks' Agreement.

(b) The positions should be restored and the incumbents of the abolished positions be returned to their former status and paid for all monetary loss sustained on account of such violation.

A joint statement of the facts by the parties shows that two men, Beagley and Frasier, who had been displaced as Assistant Station Passenger Representatives, were assigned to clerical positions in the Reservation Bureau at Chicago, Illinois, on June 16, 1946, but due to the vacation schedule they were granted two weeks vacation and reported for work in the Reservation Bureau on July 1, 1946. On the same date six clerical positions in the Reservation Bureau were abolished and the work thereof assigned, at least in part, to Beagley and Frasier. Beagley occupied such clerical position until July 16, 1946, and Frasier until August 16, 1946.

The Carrier insists that Rule 3-C-2 was not violated because the work of the abolished positions was transferred to other clerical positions which was a literal compliance with Rule 3-C-2.

The Organization, on the other hand, contends that under the current Agreement, effective May 1, 1942, the Carrier had no right to assign Beagley and Frasier to such clerical positions and that, therefore, their performance of the work of the abolished positions was forbidden by Rule 3-C-2.

While Rule 3-C-2 of the Agreement does provide that the work of an abolished position will be assigned "to another position or other positions covered by this Agreement when such other position or other positions remain in existence, * * *" it was certainly the intention of the parties that such other positions to which such work was to be assigned were positions properly filled by employees pursuant to the Agreement.

It is admitted that in this case Beagley and Frasier, at the time of their appointment to the clerical positions in the Reservation Department, held no seniority under the Clerks' Agreement and were assigned to the two positions by the Carrier without the positions having been bulletined and awarded pursuant to the applicable rules.

The Carrier contends that under the terms of Supplemental Agreement "A" which was made a part of the current Agreement of May 1, 1942, all positions in the Reservation Department were excepted from the provisions of the Master Agreement as to bulletining and as to awarding to the senior applicant.

Our question is, therefore, resolved into an interpretation of Supplemental Agreement "A." The Organization contends that the Reservation Department in the Chicago office is a distinct and separate entity which is covered by all of the rules of the Master Agreement and not excepted by any provision of the Supplemental Agreement. The Carrier points out that the Reservation Department in question is under the supervision of the Division Passenger Agent and the Assistant General Passenger Agent; that the positions therein are in the seniority district of the General Passenger Agent; and contends that such positions are, therefore, a part of the Office of the Division Passenger Agent in Chicago, all positions in which office are excepted from the rules of the Master Agreement as to bulletining and as to awarding to the senior applicant.

The first paragraph of Supplemental Agreement "A" provides that, "This supplemental agreement has for its purpose the designation of the offices, departments, positions, work and employees which shall not be subject to some or all of the provisions of the aforesaid Master Agreement and the designation of the provisions of the said Master Agreement to which they shall not be subject."

Section I-C of the Supplemental Agreement provides that "No position or individual in any of the following Executive Offices or Departments shall be subject to any of the provisions of the Master Agreement:" and then lists each particular executive office and department, including the Office of Vice-President—Traffic, and each of the executive officers thereunder, including Office of Passenger Traffic Manager, Office of General Passenger Agent (System) and Office of the Assistant General Passenger Agents (System).

Section II of the Supplemental Agreement sets out "Offices and Departments in which no position or employ is subject to certain provisions of the Master Agreement:" and A(10) thereunder states: "Traffic Department, including Regional, Divisional, District, other similar offices and City Ticket Offices."

Section III lists particular positions and employees to which certain Rules of the Master Agreement shall not be applicable.

Section III D (1) provides that "The following Rules of the Master Agreement are not applicable to the positions designated below, nor to the employees who are or may hereafter be assigned thereto, in the Traffic Department:" and thereafter lists "Offices of General Passenger Agents, All Positions" and Section III D (2) also provides that certain rules of the Master Agreement as to all positions in the Offices of Division Passenger Agents, shall not be applicable.

The Carrier insists that since the Office of Division Passenger Agent is so excepted as to all positions therein the same exception is applicable to the Reservation Bureau because the Reservation Bureau is under the supervision of and is actually part of the office of the Division of Passenger Agent. If this provision of the Supplemental Agreement be interpreted to except all positions in the Reservation Bureau then it is admitted that Beagley and Frasier were properly appointed.

With this interpretation of the Master Agreement we cannot agree.

The Reservation Bureau in question is located in Room 348, Union Station, Chicago, Illinois, and the Office of the Division Passenger Agent is located in the Loop at 16 South La Salle Street, Chicago, Illinois, which is also the location of the City Ticket Office. When we consider all of the parts of the Supplemental Agreement and the particularity with which the various excepted offices and positions are set out, we must conclude that the parties have carefully considered and listed all of the offices which were intended to be excepted from all or part of the rules of the Master Agreement. The Supplemental Agreement seems to show clearly that the parties did not therein follow the plan of considering offices which were under the supervision of or technically part of another office as excepted from the rules of the Agreement merely because the supervisory office or head office was expressly excepted.

We, therefore, hold that the Reservation Department of the Carrier at Chicago, Illinois, was a separate entity so far as the Supplemental Agreement between the parties is concerned and that the positions in said Reservation Bureau were not excepted from any of the Rules of the Master Agreement. The two positions to which Beagley and Frasier were assigned in such Reservation Bureau should have been bulletined and assigned pursuant to the rules of the Master Agreement. The failure of the Carrier to do this constituted a violation of the current Agreement and resulted in Beagley and Frasier not being properly in those positions. Under the circumstances of this case, therefore, it was a violation of Rule 3-C-2 for the Carrier to transfer the work of the abolished positions to these two positions which had been filled by the Carrier without regard to the Rules of the Master Agreement.

The two persons highest on the seniority list who were in the abolished positions should, therefore, be paid for the monetary loss sustained by them on account of the work formerly performed on such positions being so assigned in violation of Rule 3-C-2 during the period such work was performed by Beagley and Frasier.

We see no reason for ordering the abolished positions restored.

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 applicable Agreement as indicated in the Opinion.

AWARD

Claims (a) and (b) sustained as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1948.