

Award No. 4318
Docket No. CL-4359

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate the provisions of Clerical Agreement No. 7 and Memoranda in connection therewith when it did on or about February 9, 1947, arbitrarily establish, classify, rate and assign, without conference or agreement, positions on the various seniority districts with title of "Supervisor and/or Secretary, Employee Suggestion System", and

(b) That the Carrier shall apply the provisions of the rules of the Clerical Agreement to such positions as are here involved and that each and every employee who has suffered wage loss by reason of the failure and refusal of the Carrier to properly apply the terms of the Clerical Agreement be compensated for any and all such wage loss sustained.

EMPLOYEES' STATEMENT OF FACTS: On January 17, 1947, Mr. J. B. Parrish, then Vice President, wrote the General Chairmen of all the crafts as follows:

"Gentlemen:

I am inviting each of you to be present at a meeting to be held at 3:00 P. M., Wednesday, February 5, 1947, at the Frederick Hotel, Huntington, West Virginia.

The purpose of this meeting is to explain to you a suggestion system which is to be put into effect on the Chesapeake and Ohio Railway and it is my desire to present this to you personally.

Our President, Mr. R. J. Bowman, will also be in Huntington on that day and I would like to give you the opportunity of meeting him, so I hope it will be possible for each of you to attend."

On February 7, 1947, a 4-page pamphlet was issued by President R. J. Bowman, addressed to all Chesapeake and Ohio Railway employees and in addition to containing an open letter to them on the subject of the suggestion plan, it set forth on Pages 2, 3, and 4, the plan itself. A copy of this pamphlet is attached as Employees Exhibit "A", and is hereby made a part of this submission.

On January 24, 1947, Mr. C. R. Hook, Jr., Assistant to the President—Personnel, issued a circular of appointment reading:

OPINION OF BOARD: On February 10, 1947 Carrier effectuated a suggestion system on its property. The system was organized to function through Committees established in each division, in the Huntington Shops and the General Office in Richmond, Virginia. After treatment of the suggestion and decision upon awards for those found acceptable at the division, shops, or office level, they were sent to the General Suggestion Committee at Richmond, Virginia, for further consideration on a system-wide basis. The functioning of the system was supervised by an employee entitled Manager, Employees' Suggestion System Department. On the division, shops and office level, positions of Suggestion System Supervisor (Secretary) were established by Carrier, which positions were filled without regard to the provisions of the Clerks' Agreement. The Employees assert the positions are subject to the Scope Rule and file claim as indicated. The duties of the Suggestion Committee Supervisor or Secretary as generally described by Carrier are as follows:

"(1) Reviewing suggestions received to insure confidential handling of those designated to be handled by number only. Also seeing that suggestions are properly classified as to department from which submitted and department affected.

(2) Elimination of nonconstructive suggestions and seeing that suggestions which are determined to be duplicates are declined.

(3) Interviewing suggestors. A considerable amount of time is spent obtaining additional information concerning suggestions either before or after submission to the local committee. This frequently requires, in addition to interviewing suggestors, travel and correspondence in connection with such investigations.

(4) Securing essential information for developing estimated cost and estimated savings.

(5) Arranges for preparation of suggestions for submission to local committee when suggestions require rewriting, further explanation and/or sketches. Also preparing or having prepared sketches in connection with suggestions.

(6) Attending weekly meetings and acting as secretary of local committee.

(7) Preparation of reports of investigations.

(8) Preparation of recommendations of local committees for submission to the General Committee.

(9) Dictating letters, reports, recommendations, etc., in connection with the above outlined duties."

Nowhere in the record is there any information with respect to the amount of time devoted by the Suggestion Committee Supervisor or Secretary to routine clerical duties. The Employees do not agree entirely with the description of the duties set forth by the Carrier but in an analysis of the duties attempt to show that performance thereof requires not less than four hours per day of routine clerical work. By inference, from the Carrier's own description of the duties of the positions, we can conclude that the amount of routine clerical work performed thereon is substantial. For example: item one, clearly requires sorting of the suggestion forms; item two, requires a canvass of filed records; item nine, does not require as much exercise of initiative and independent judgment as would appear from a casual reading thereof for much of the work described is done by use of prescribed forms as appears from the exhibits submitted and in the record. These functions in many respects are clearly clerical and suffice it to say that other work of a clearly clerical nature is required in discharging the

other listed duties of the positions. While as stated above, we are convinced that the occupants of the position perform a substantial amount of routine clerical work, we are by no means convinced, nor do we believe the Employees have established that the work of the positions requires four hours per day of routine clerical work. Were we so convinced, our task here would be considerably lighter and we would not have to resort to other less definitive provisions of the Scope Rule in order to arrive at a decision with respect to this claim.

Carrier asserts that the positions are subordinate officials and hence not covered by the Scope Rule. The Scope Rule of the present Agreement, however, does not expressly except subordinate officials from its operation. As a matter of fact, as appears from the record, in the previous Agreement between the parties subordinate officials were expressly excepted but said exception was eliminated from the present Agreement. This would lead to a fair inference that subordinate officials of the clerical craft would be included in the present Scope Rule. However, we would hesitate to base a decision on that ground alone, for there are other provisions in the rule with respect to subordinate officials which to some extent rebut this inference.

Carrier urges that the positions are not covered because of the confidential nature of the same. This may be a good reason for making the positions excepted by negotiation. However, under the provisions of the involved Scope Rule there is no room for interpretation which would permit a holding that a position otherwise covered should be considered as excepted because of the confidential nature of the work thereof. That this is true is evidenced by the Agreement of the parties known as Memorandum No. 1 where immediate personal office forces of certain officers are excepted from certain specified rule of the Agreement. In other words, the parties recognized that the duties of positions listed in Memorandum Agreement No. 1 were such as to bring them within the coverage of the Scope Rule but excepted them from certain provisions of the Agreement by mutual understanding because of the peculiar character of the work.

In our opinion the crux of this controversy lies in the answer to the question as to whether or not these employees can be considered as of a class with the positions listed in the Scope Rule, Section 1 (a). It is to be noted that that part of the rule provides as follows:

"RULE 1—SCOPE

(a) These rules shall govern the hours of service and working conditions of all of the following class of employees:

Group 1—Clerical Workers: Employees who regularly devote not less than 4 hours per day to the compiling, writing, and/or calculating incident to keeping records and accounts, transcribing and writing letters, rendition of bills, reports, statements, handling of correspondence, checking baggage, freight and material, and similar work, and to the operation of office or station mechanical equipment requiring special skill and training such as typewriters, calculating machines, adding machines, bookkeeping machines, tabulating machines, accounting and timekeeping machines, statistical machines, dictaphones, key punch, recordak, and photostat machines, teletype (except teletypes used exclusively in the transmission of messages and reports and located in offices which are equipped with telegraph facilities), and other similar equipment or devices used in the performance of clerical work or in lieu thereof. Also station, store and warehouse general foremen and assistant general foremen; station, store, warehouse and merchandise pier foremen and assistant foremen; at Newport News, Virginia, top and bottom coal pier foremen and assistants, and sprinkler foremen; pursers and assistant pursers, chief clerks, assistant chief clerks, ticket sellers, managers of Zone Revision Bureaus, division storekeepers, stationery store-

keeper, car distributors, traveling timekeeping accountants, assistant boatmasters, city ticket agents and assistants."

In our opinion these positions are of a class with chief clerk or assistant chief clerks. As a matter of fact, from an intensive study of the duties of the position as outlined by both Carrier and Employees and from an analysis of the circular letter setting up this system and the forms exhibited in the record and used by the employees in the conduct of their work, it appears that the incumbents of these positions act in the capacity of clerk to the Suggestion Committee. The term "Supervisor" is a misnomer, that is, insofar as it is generally used in personnel classification parlance. The only employee the occupants of these positions supervise is a stenographer assigned to assist in the typing and dictation necessary in instances where the amount of suggestions is of considerable volume. In other instances the same work is done by the Suggestion Supervisor himself. As pointed out above, such dictation as is done is not of a kind requiring considerable initiative but, generally speaking, consists in instructing how to use a particular form and the supervisory nature of the position does not extend to being responsible for the effective utilization of a complement of personnel with authority to hire or fire or even where recommendations as to hiring or firing are given great weight. In other words, there is little of discretionary power reposed in the Supervisor or Secretary such as is ordinarily considered incident to a supervisory or official position. The incumbents of these positions act within a prescribed and limited orbit. Policies are handed down from the officials of the Carrier or from the Manager of the system at Richmond. True, they are occasionally required to attend general meetings away from their home offices at which the overall conduct of the system is discussed and recommendations are solicited or volunteered for its improvement but a good executive or office manager will call meetings of his staff and expect suggestions as to improvement from alert employees even though they may be rank and file clerks. The management of the railroad recognized that in establishing the suggestion system but certainly did not intend to make all employees officials by affording them a voice in management to the extent that their acceptable suggestions were adopted.

On the whole, we believe that here management set up positions requiring a fair grasp of routine administrative duties, experience in high-type clerical work, a moderate amount of tact and an ability to respect confidences. We think this is borne out, to some extent, by the choice of employees selected to fill the positions. They were taken from the ranks of skilled clerical workers, a draftsman and in one instance, a brakeman. These were men of no particular technical engineering training or training in business administration. Those awards cited by Carrier on the argument of the docket involving positions of tax accountants and lease agents therefore have no application here. Nor do those involving positions of responsible supervisory character, in view of our comments in the preceding paragraph.

We believe that the Carrier's presentation and the record herein presents a substantial case for negotiation for exception from certain of the rules of the Agreement. That, however, in view of the broad language of the Scope Rule of the Agreement under consideration does not permit this Board by interpretation to exclude what appears to us to be clearly covered positions. We have no wish to interfere with Carrier's right to set up official positions outside the scope of the Agreement but as we hoped to convey throughout this opinion we do not view these positions as coming within that category. An affirmative award is required.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of February, 1949.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Interpretation No. 1 to Award No. 4318

Docket CL-4359

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: The Chesapeake and Ohio Railway Company.

Upon the application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In this request for interpretation of our Award 4318, it appears from the submissions of the parties that the positions involved in that Award were abolished about one month after the date of the Award. The issue upon which Carrier and Employees find themselves in disagreement in connection with the application of the Award, is the manner of determining the employees entitled to monetary reparation by reason of the Carrier's failure to properly apply the Agreement in the first instance.

It will be observed that in the Statement of Claim, which we sustained, there are no named employees. That, of course, under many precedent Awards of this Board is no bar to the Award of compensation. The burden is upon the Organization to show who the individuals are in the class who suffered wage loss. The Organization contends that these individuals should be determined by advertising the twelve positions involved, on a "now for then" basis, that thereafter Management make a quasi assignment thereto, bulletin the positions which would have been "vacated" by the quasi successful bidder, assign employees thereto and repeat the process until all putative vacancies caused by this shifting of personnel are "filled". After completion of this process, then, the employees so selected for higher positions be compensated for the difference between what they would have earned had they been permitted to work such positions and what they earned on their regular positions to the date of the abolition of the positions involved in the Award.

We cannot agree with the Organization's suggested interpretation of our Award. We sustained a claim of Agreement violation for failure to fill twelve positions of Suggestion Committee Supervisor and/or Secretary in accordance with the Agreement. Those who have been injured by the violations found in Award 4318 are the twelve employees who at the time of filling said positions would have been eligible to appointment thereto under the Agreement Rules and such others as would have become so eligible in the event any incumbencies of the original twelve would have terminated during the time said positions remained in existence.

As said above, the burden is upon the Organization to show who these employees are. In view of the fact that the positions have been abolished there is no need for bulletining. Upon nomination of such employees by the Organi-

zation, Carrier is obligated to pay the wage loss sustained by them. As indicated in Interpretation No. 1 to Award 3902, the fact that such persons may not be primarily entitled is not a controlling factor insofar as Carrier is concerned. It need not pay but once. To attempt to fix any losses beyond those above mentioned would be entering into the realm of the remote and speculative.

Referee Francis J. Robertson, who sat with the Division as a member when Award No. 4318 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of September, 1950.

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