

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That the Carrier violated and continues to violate the Clerks' Agreement of May 29, 1942, as revised effective May 14, 1948, when they failed to fill the position of Assistant Chief Clerk, Passenger Traffic Department, Boston, Mass., rate \$76.94 per week, when said position became vacant effective September 23, 1946, upon the retirement of the then occupant thereof, Mr. Frank H. Evans.

2. When, thereafter, while this position remained vacant, the Carrier transferred a material part of the work thereof to Clerk William Q. Hadley, and required the performance thereof by him at the regular rate of pay of his own position, \$53.86 per week, and transferred other parts of the work to Miss Lena M. Harris, appearing on the Machine Operators' Seniority District, a seniority district separate and apart from the Clerical Seniority District, and therefore required the performance of said work by her at the regular rate of her position of \$52.25 per week.

3. When the Carrier abolished this position by written notice issued by Mr. C. F. Palmer, Passenger Traffic Manager, dated March 26, 1947, effective that day, in the following language as contained in the notice:

"Position of Assistant Chief Clerk in General Office is abolished as of this date."

4. That the Carrier be required to restore this position of Assistant Chief Clerk, assigning Clerk Charles A. Singer, seniority and service date of April 1, 1903 to the position, retroactively as of October 22, 1946 at the then rate of the position of \$76.94 per week, and that the said Charles A. Singer be reimbursed for the difference between that rate (plus all subsequent increases that would normally have been applied to it under the general wage increases which have become effective since that time) and what he has otherwise earned in the employ of the Carrier.

5. That the Carrier be required to negotiate with the General Chairman of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, an upward adjustment in rate of pay on positions held by Clerk W. O. Hadley and Secretary Lena Harris, retroactively to September 23rd, 1946, as a result of the in-

creased duties and responsibilities assigned to their positions by virtue of the Carrier assigning to them to be performed, a material portion of the duties of the Assistant Chief Clerk's position.

EMPLOYEES' STATEMENT OF FACTS: There exists a Rule Agreement between the parties effective May 29, 1942, as revised effective May 14, 1948. The position of Assistant Chief Clerk, Passenger Traffic Department, and other positions referred to in this case are included in this Rules Agreement, in accordance with the Mediation Agreement in N.M.B., Case A-1705, effective October 27, 1944.

Section (c) of said Mediation Agreement under the heading, "Passenger Traffic Department" provided in part as follows:

"A revision in the classification and rate of pay of the position of Assistant Chief Clerk . . . shall be the subject of negotiation between the parties when and if the position becomes vacant."

Subsequently, the said position of Assistant Chief Clerk became vacant effective September 23, 1946 upon the retirement of the occupant of the position, Mr. Franklin H. Evans.

On September 26, 1946, the Carrier served written notice upon the System Committee of the Brotherhood of its desire to negotiate a downward revision in the rate of this position under the provisions of the Mediation Agreement of October 27, 1944, hereinbefore referred to:

While negotiations were being conducted between the parties upon this request of the Carrier, and before any agreement had been reached, the "Promotion Committee" in the Passenger Traffic Department, created in conformity with the provisions of Rule 7 of the Agreement between the parties, effective May 29, 1942, met on October 21, 1946 and again on October 22, 1946, and in accordance with the provisions of the rules of said Agreement between the parties, by majority vote, proceeded to fill the vacancy existing in the position of Assistant Chief Clerk and assigned Clerk Charles A. Singer, seniority and service date of April 1, 1903, to this position. Mr. Singer, however, was not permitted to take the position because of the fact that Mr. C. F. Palmer, Passenger Traffic Manager and Chairman of the Promotion Committee notified the other members of the Committee verbally on October 23, 1946 that he was not going to fill this position because:

"He had no right to do so in view of the job being in negotiations."

In the meantime, a substantial part of the work of this position of Assistant Chief Clerk, to-wit, on October 15, 1946, was assigned to Clerk William O. Hadley, with seniority date of September 6, 1924 by the Carrier and he was thereafter required to perform said work at the regular rate of his position of \$53.86 per week. Other parts of the work had already been assigned by the Carrier to Miss Lena M. Harris, a Secretary, appearing on the Machine Operators' seniority district, a district separate and apart from the Clerical Seniority District, and thereafter, she was required to perform the said work at the regular rate of her position of \$52.25 per week.

Under date of October 16, 1946, the Carrier in a letter addressed by Richard W. Hall, Chief of Personnel to H. D. Ulrich, General Chairman of the System Committee of the Brotherhood, made a further proposal to the Brotherhood to cancel the position of Assistant Chief Clerk and set up a Clerk's position paying \$45.00 a week. In General Chairman Ulrich's reply to Chief of Personnel Hall, dated November 22, 1946, he advised the Carrier that the System Committee of the Brotherhood was not disposed to accept this proposal, but instead requested the Carrier to restore the duties and responsibilities to the position of Assistant Chief Clerk, in keeping with its title

igned to handle labor matters. Carrier's first intimation of the monetary claim as contained in this item was from the "notice of intent to file an ex parte submission". Even were there the slightest merit in any one of the five parts of Petitioner's entire claim, this specific portion could not be sustained for it has not been handled in accordance with the controlling agreement under the Railway Labor Act.

ITEM 5

Carrier will give scant consideration to this item and the Board should do likewise. Petitioner starts this item with the language:

"That the Carrier be ordered to negotiate . . ."

Let us consider the implication contained in that simple statement. The first inference is that Carrier has refused to negotiate. How could Carrier possibly be guilty of refusing to negotiate when the first knowledge revealed to Carrier that the Petitioner desired to negotiate "an upward adjustment in rate of pay on position held by Clerk W. O. Hadley and Secretary Lena M. Harris" was contained in this same notice of intent to file an ex parte submission.

Carrier has never refused to "negotiate" when requested, or required by contract rule to do so. The Board should reject Item 5 as not a "dispute" and, therefore, not referable to the Third Division.

SUMMARY

Carrier has outlined above its defense against the five items of claim contained in Petitioner's ex parte submission. It believes its position is a thoroughly sound one. The Board should either declare its lack of jurisdiction over the entire claim or should deny it on the grounds referred to by Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: The issues, raised by the claims of record, have developed from the dispute over the application of a provision of a Mediation Agreement entered into by the parties on October 27, 1944. At that time, the Carrier had in its employe in the position of Assistant Chief Clerk, Passenger Traffic Department, Boston, an employe who had served the company many years. In the latter years of his service, his duties had become routine in character. When the Mediation Agreement was entered into, the parties provided, among other things, that upon the retirement of the Assistant Chief Clerk, the classification and rate of pay of his position would become the subject of negotiation. The Assistant Chief Clerk retired on September 23, 1946. The promotion committee, as provided by the Agreement, recommended that Charles A. Singer be promoted to the position, but the official in charge vetoed the recommendation because the job was in negotiation. Negotiations with reference to the position had commenced as required by the Mediation Agreement. These negotiations continued from time to time until July 1947. On March 26, 1947, without the six-day notice as required by Rule 10, the Carrier abolished the job. When the Assistant Chief Clerk retired, the duties remaining in his position had been absorbed by other employes in the office. The details of this work are more fully set forth in the affidavits of Mr. Hadley and Miss Harris which appear in the record.

Claims 1, 2, 3, and 4 rest on the proposition that the Agreement between the parties required the Carrier to fill the position vacated by the retirement of the Assistant Chief Clerk and that the contract was further violated when work of the Assistant Chief Clerk was assigned to employes not holding seniority on the clerical seniority roster. Except for the portion of claim 2 relating to assignment of work to a person not holding clerical seniority, these claims depend on the contention that the position of Assistant Chief Clerk continued in existence after the retirement of Mr. Evans, who formerly

held the job. The position of the Carrier is that Section (c) of the Mediation Agreement did not contemplate the continuance of the position, and until agreement was reached on a revision of the classification and rate of pay, there was no position to fill.

Section (c) of the Mediation Agreement reads, in part, as follows:

“(c) A revision in the classification and rate of pay of the position of . . . Assistant Chief Clerk . . . shall be the subject of negotiation between the parties when and if these positions become vacant.”

The Mediation Agreement is a special contract dealing with particular matters and insofar as it is in conflict with the provisions of the general Agreement of the parties, must be strictly construed. Section (c) does not contain any specific language abolishing the position of Assistant Chief Clerk. Had the parties intended such result, they could have so provided. On the contrary, the parties agreed that “A revision in the classification and rate of pay of the position” would be negotiated. This language is more susceptible of the conclusion that the “position” was to remain, but under a different classification and rate of pay, than that the parties intended to abolish it. Nor are we able to find in Section (c) the expressed intention of the parties to suspend the rules relating to the filling of vacancies during the pendency of the negotiations. The contracting parties to the Mediation Agreement and the Rules Agreement are the same, and had they intended that Rules respecting the bulletining and filling of positions were not to apply, the parties should have provided so in specific terms. We cannot imply a modification of the Rules.

We have concluded, therefore, that upon the resignation of the Assistant Chief Clerk there was a vacancy in that position which the Carrier under Rule 8 was bound to fill until it should be abolished in accordance with the Rules. The claim, therefore, on behalf of Charles A. Singer for the difference in pay received by him to and including April 1, 1947, (being six days after the notice abolishing the position) is valid.

The facts do not support the contention that the character of work transferred to Clerks W. O. Hadley and Lena M. Harris was of a kind materially increasing their responsibility or duties. The record shows that the work performed by Mr. Evans was of routine character; and the record fails to establish that the increased duties of these Clerks placed them in positions for which higher rates had been established. The entire record also does not support the claim that work belonging to the Clerical Seniority District was transferred to the Machine Operators' Seniority District. The Carrier asserts that the former Assistant Chief Clerk had been assisting Miss Harris and upon his retirement her duties revolved back on her. Upon all of the circumstances presented by this docket, we think this is a reasonable construction of the facts. The claims, therefore, on behalf of employees Hadley and Harris are not supported by the facts.

Claim 5 requests that the Carrier be required to negotiate with the General Chairman an upward adjustment in the rate of pay for positions held by Clerk Hadley and Secretary Harris. The record does not establish that the duties and responsibilities were materially increased when the Assistant Chief Clerk resigned, and, even if the duties and responsibilities were increased, the record does not furnish us criteria with which a comparison could be made in an effort to arrive at a rate.

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

The Carrier violated the Agreement in not filling the vacancy in accordance with the Rules when Frank H. Evans resigned from the position of Assistant Chief Clerk.

The claims of William O. Hadley and Lena M. Harris are not supported by the facts.

The effective day for the abolishment of the position of Assistant Chief Clerk was six days after March 26, 1947.

AWARD

Claims (1) and (4) sustained per the Opinion and Findings.

Claims (2) and (5) denied.

Claim (3) denied subject to the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of August, 1950.