

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated and continues to violate the Clerks' Agreement when on November 8, 1950, it unilaterally discontinued established position of Steno-Clerk, General Offices, Portland, Oregon, Seniority District No. 84, and created under a different title a position of Secretary to perform relatively the same class of work.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 1, 1949 the procedure established by Carrier for handling grievances, etc., of employees was on appeal to the General Manager in the designated Operating Department Districts. The Assistant to General Manager was designated to represent the General Manager in the Northwestern District, General Office at Portland. A Steno-Clerk, fully scheduled position—Seniority District 84 was regularly assigned as Steno-Clerk to the Assistant to the General Manager. June 1, 1949, the Carrier rearranged its official personnel for handling of grievances, etc., and, among others, changed the title of Mr. Newman from Assistant to General Manager at Portland to Assistant to Vice President, Department of Labor Relations. This office is one of three on the Union Pacific System all reporting direct to the Vice President, Mr. Connors at Omaha, Nebraska. No change was made at that time with respect to the Steno-Clerk. She continued to act as heretofore as the Steno-Clerk (secretarial duties) to Mr. Newman.

November 3, 1950, General Manager Collins issued a bulletin "abolishing" the position of Steno-Clerk, held by Miss Mary Olson, to become effective December 7, 1950. (Employees' Exhibit 1.)

Concurrently therewith Mr. Newman formally advised us of the contemplated change in title of Miss Olson and that the new position would be designated as one coming within Rule 1 (d) of our Agreement. (Employees' Exhibit 2.)

This unilateral action of Mr. Newman was promptly protested as evidenced by my letter to him dated November 6, 1950 as being in violation of the rules of our Agreement, particularly that part of Rule 26 reading as follows:

"* * * established positions will not be discontinued and new positions created under different titles covering relatively the same

Assistant." The President's office is located in the Carrier's general office building in Omaha, Nebraska, and is referred to in rule in the singular, but Executive Assistant offices are located at Portland, Oregon, and Kansas City, Missouri, with a separate office under the Portland officer at Seattle, Washington; all positions in these offices are Rule 1(d).

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to June 1, 1949, claimant was regularly assigned as Steno-Clerk in Central Timekeeping Bureau, performing secretarial work for the Assistant to General Manager. On that date, Carrier changed the title of Assistant to General Manager to Assistant to Vice President, Department of Labor Relations. Claimant continued as Steno-Clerk to the newly named position until November 3, 1950, when the Steno-Clerk position was abolished. A new position was established under a different title having the identical duties as the former position. By showing the position as Secretary to Assistant to Vice President-Personnel, the position is claimed to be partially excepted under Rule 1 of the Agreement which makes all positions in vice presidents' offices subject only to Rules 10, 15 and 22. The Organization contends that this constitutes a violation of Rule 26 which provides in part:

"* * *, but established positions will not be discontinued and new positions created under different titles covering relatively the same class of work, for the purpose of reducing the rate of pay or evading the application of these rules."

Rule 26, Current Agreement.

The record shows that prior to June 1, 1949, O. H. Newman occupied the position of Assistant to General Manager at Portland. The position handled personnel matters for the Carrier and was an official position. The position of Steno-Clerk to the Assistant to General Manager was within the Clerks' Agreement and was occupied by Mary Olson. About June 1, 1949, Carrier changed its procedure to permit the handling of grievances by a Vice President, Department of Labor Relations, in the Carrier's office at Omaha instead of having these matters finally handled by the General Manager. Consequently, the office held by Mr. Newman was changed from Assistant to General Manager to Assistant to Vice President, Personnel. The work of the position, however, remained the same. It is the contention of the Carrier that this change of title without any change in duties had the effect of making all clerical positions under Mr. Newman excepted from the Clerks' Agreement, except as to Rules 10, 15 and 22, because under Rule 1 all positions in vice presidents' offices are subject only to those rules. The record shows that the position occupied by Mary Olson continued under the Clerks' Agreement as before until November 3, 1950, when it was abolished and she was given a new position designated as Secretary to Assistant to Vice Presidents' Offices" means only the positions in the office of the Vice President, position had the effect of excluding Mary Olson's position from the Agreement except as to Rules 10, 15 and 22, they being rules dealing with seniority only. The Organization contends that it was a discontinuance of an established position and the creation of a new position covering the same class of work under a different title for the purpose of evading the application of agreement rules.

The Organization contends the words "all positions in: * * * Vice Presidents' Offices" means only the positions in the office of the Vice President, Personnel, in Omaha and was not intended to include positions elsewhere on the system. This interpretation is too narrow and would have the effect of defeating the purpose of the exclusionary provision. Certainly it was intended to include subordinate executive and supervisory officers such as Mr. Newman. The Carrier, on the other hand, contends that the provision excepts from the Agreement, except as to Rules 10, 15 and 22, all employees, wherever located, placed under the supervision of the Vice President, Personnel. If this be so, the Carrier could, if so inclined, remove an unlimited

number of positions from the Agreement, except for the rules specified, by the simple expedient of placing them in the office of a Vice President. Such was not intended when the rule was written.

The case must necessarily be resolved on more fundamental reasoning, a reasoning based on the purposes intended to be accomplished by excepting certain positions from many rules of the Agreement.

It was recognized by Management and the Organization that many executive positions requiring training, ability or special skills should be selected by those responsible for the efficient and safe operation of the railroad. In the case before us we would say that the Assistant to Vice President, Personnel, was such a position. The other type position of interest here that was recognized as properly excluded from most or all rules of an agreement is that which bears a confidential relationship to a superior executive officer. In other words, was the position of Secretary to Assistant to Vice President, Personnel, such a position. We think not here under the facts here presented. In the first place, the position was under the Clerks' Agreement for a considerable period of time before Carrier's reorganization of its Personnel Department was made without any complaints so far as the record shows. After the reorganization was made, the position was continued under the Clerks' Agreement from June 1, 1949, to November 3, 1950, without any complaint shown by the record. After the Steno-Clerk position was abolished and the position of Secretary created with the same duties, the same employe was assigned to it, a clear indication that the reason for discontinuing of the old position and creating the new one was something other than an attempt to secure added efficiency and confidence in the position. We do not think, under all the circumstances here shown by this record that it can be said that it was intended by the parties to the Agreement that the position of Steno-Clerk could be removed from the Clerks' Agreement, except Rules 10, 15 and 22, in the manner here shown. A reasonable interpretation of the Agreement does not indicate an intention that the position here involved could be transferred in and out of the Agreement by a mere change of titles of executive officers without any change of duties or any reasonable cause shown that would support the basic reasons for the original establishment of partially excepted positions. The positions was improperly assigned as a partially excepted position.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.