

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**

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, (and amended effective September 1, 1949, for the purpose of effectuating the Chicago Agreement of March 19, 1949, pertaining to the 40-Hour Week,) when it abolished, effective December 29, 1950, the position of Manager, Travel Bureau, North Station, Boston, Mass., held by Mr. William C. Daly, rate of pay \$75.64 per week, and created a new official position of Assistant General Passenger Agent with relatively the same duties and responsibilities as that of Manager, Travel Bureau, to which official position it appointed the said William C. Daly, effective January 1, 1951; and

(2) That the Carrier shall be required to re-establish the position of Manager, Travel Bureau, North Station, and fill same in accordance with the Agreement between the parties; and

(3) That all employees who may have been adversely affected as a result of this alleged violation of the Agreement between the parties by the Carrier be compensated for all wage loss sustained representing the difference between the rate of pay of their position and the rate of the position to which they would have been, or are hereafter, assigned in the filling of said position of Manager, Travel Bureau, retroactive to December 30, 1950, and continuing so long as the alleged violation continues (plus any subsequent general wage increases applicable to said position).

EMPLOYES' STATEMENT OF FACTS: There exists a Rules Agreement between the parties, effective May 29, 1942, as revised effective May 14, 1948, (and amended effective September 1, 1949, for the purpose of effectuating the Chicago Agreement of March 19, 1949, pertaining to the 40-Hour Week, effective September 1, 1949). The position of Manager, Travel Bureau, North Station, Passenger Traffic Department, referred to in this case, is included in this Rules Agreement, in accordance with the Mediation Agreement in N. M. B. Case A-1705, effective November 1, 1944.

(4) The position of Assistant General Passenger Agent does not cover relatively the same class of work as was formerly performed by the Manager, Travel Bureau.

(5) The new position was not created for the purpose of reducing the rate of pay.

(6) The new position was not created for the purpose of evading the application of the rules.

(7) There is no merit to the claim.

(8) The claim is too vague and indefinite to permit an affirmative award.

(9) The claim is barred because not properly handled on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier's contention with respect to this claim being barred because of failure to progress same on the property in accordance with the rules and because of vagueness and indefiniteness is without merit. The claim is before the Board on a joint submission. By joining with the employees in the submission of the claim, without reserving or preserving objections to alleged procedural defects, Carrier has in effect conceded that the claim is properly before this Division (See Awards 1314 and 3891).

The record indicates that the Carrier in re-organizing its Passenger Traffic Department abolished a position entitled "Manager Travel Bureau". That position was by mediation Agreement made subject to the application of the rules of the Collective Bargaining Agreement except as to pay rules. Upon the abolishment of the Manager Travel Bureau position, its former occupant, one Mr. Daly, was assigned to a newly created official excepted position known as Assistant General Passenger Agent.

The employees assert that after the creation of the position of Assistant General Passenger Agent, Mr. Daly continued to perform relatively the same duties as he had performed when occupying the position of Manager Travel Bureau, even to the extent of performing said work at the same desk location and in the same office. Carrier, while admitting that Mr. Daly retained his old desk and telephone number, denies that he is performing relatively the same class of work there and points out that he also has a desk in the Passenger Traffic Department and a telephone there as well. Carrier further states Mr. Daly spends possibly an hour or two a day in the Travel Bureau but that time is devoted to the performance of his new duties except for a small amount of time required on payrolls and supervision which admittedly was work performed by him when he occupied the position of Manager Travel Bureau. Nowhere in the record is there any showing with respect to how the duties of the abolished position, with the exception of the payroll work and supervision, were distributed.

It is clear from Carrier's own admissions that at least 10% of the same work performed on the abolished position is now performed on the new position. In addition, the description of other of the new duties performed by Mr. Daly as compared with those performed on the abolished position, particularly those performed in connection with special party moves, indicates that some other work on the new position is relatively of the same class as that done on the old.

There is no question that the position of Manager Travel Bureau was covered by the Scope Rule of the Agreement between the parties. This Board has held that a clerical position may not be abolished and work appertaining thereto be assigned to another clerical employe whose position is excepted

from the Agreement. (See Awards 751 and 3396.) Conceding that this holding is somewhat modified with respect to supervisory duties by the holding in Award 4992, the fact remains that in the instant case not all of the duties concededly performed on the abolished position and now performed on the new official position were supervisory and in addition there is the indication that some of the work on the newly created position is relatively of the same class as that done on the old. The fact that the position of Manager Travel Bureau was excepted from the pay rules of the Agreement does not make the principle above indicated as being established by Awards 751 and 3396 and others any the less applicable. It follows a sustaining Award is indicated.

While it is clear that a sustaining Award is indicated in this docket, it does not follow that the claim should be sustained in full. This Board has indicated on many occasions that it will not direct the Carrier to re-establish positions. How the Carrier cures the rule violation is a matter within its discretion. Claim (2) must, therefore, be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim (1) sustained, (2) denied and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of November, 1951.