

Award No. 6449
Docket No. CL-6583

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Carrier violated the Rules of the Clerks' Agreement when on August 1, 1950, it bulletined Position No. 77, Assistant Chief Clerk in the Office of Freight Protection, Merchandise and Station Service, San Francisco, California, as excepted from Rules 27 and 28, Promotion, Assignments and Displacements.

(b) That Carrier shall now be required to rebulletin Position No. 77, Assistant Chief Clerk, without Rules 27 and 28 exceptions.

EMPLOYEES' STATEMENT OF FACTS: 1. There is in evidence an Agreement between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its Employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, bearing effective date of October 1, 1940, which Agreement (hereinafter referred to as the current Agreement) was in effect on the date involved in the instant claim. A copy of the current Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

2. The current Agreement above-referred-to, effective October 1, 1940, superseded the first collective bargaining Agreement between the parties effective February 1, 1922 (revised January 1, 1924) as provided for in Rule 69 of the current Agreement, reading:

"This Agreement takes effect October 1, 1940, it supersedes all previous agreements, and shall continue in effect until it is changed as provided herein, or under provisions of the Amended Railway Labor Act. Should either party to this Agreement desire to revise or modify these rules, thirty (30) days' written advance notice, stating the proposed change or changes desired, shall be given by either party to the other."

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

(a) Carrier violated and continues to violate the rules of our current agreement, when it refused and continues to refuse, to grant employes W. H. Kline, R. K. Kerr, Sr., and S. L. Freeman, investigation requested under the provisions of Rule 50 of our current agreement with the Carrier, in connection with filling position of Stationmaster at Tucson, Arizona.

(b) Employes W. H. Kline, R. K. Kerr, Sr., and S. L. Freeman be granted investigation under the provisions of Rule 50, in the order of their seniority.

(c) If investigations held in seniority order under the provisions of Rule 50 develop that any one of the three employes involved, Kline, Kerr, or Freeman, possess sufficient fitness and ability to fill the position of Stationmaster at Tucson, he shall be assigned to the position and reimbursed for any wage loss sustained because of prior non-assignment, retroactive to August 1, 1943."

The above-quoted claim was denied by Award No. 2940.

In this connection, the petitioner has cited no provisions of the Agreement of 1940 or settlement to support its contention. The carrier asserts that there are no provisions in said agreement which will support the petitioner's contentions in this dispute. A distinction must necessarily be drawn between the petitioner's aspirations and its contractual rights which flow from the current agreement.

In conclusion, the carrier asserts that the petitioner's claim is not supported by any provision of the Agreement of 1940.

Carrier, therefore, requests that this Division deny the claim in this docket in its entirety.

CONCLUSION

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is similar in all but one respect, to the claim advanced in Docket CL-6516. The difference being that in that case the Carrier requested the agreement of the Organization in establishing Position No. 130-B and in the instant case such agreement was not requested before Position No. 77 was established as being excepted from Rules 27 and 28.

Here there is an agreement between the parties which provides that "these rules shall govern the hours of service and working conditions" of clerical workers. There is attached Addendum No. 1 to the agreement which excepts certain departments, offices and positions from the scope of the agreement. The positions so excepted are listed by title, department and location. There is also attached Supplement No. 1 to the agreement which excepts certain positions "from Promotion, Assignments and Displacements Rules Nos. 27 and 28". The positions excepted are listed by title, department and location.

It appears that the addendum and the supplement listed positions then existing, and that similar positions created subsequently at other locations were similarly excepted by letter agreements.

The agreement, the addendum and the supplement limit the right of the Carrier to act unilaterally in the establishment of excepted positions.

It is clear from the docket that Position No. 77 was established and given the special status of exception from Rules 27 and 28 by the Carrier's unilateral action. Such establishment is an attempt to extend the agreement beyond the specific limits fixed by the parties.

Accordingly we are of the opinion that the rules having been violated Claim (a) should be sustained.

As to Claim (b) "That Carrier . . . be required to rebulletin Position No. 77 . . . without . . . exceptions" we are of the opinion that this requests affirmative relief beyond that granted by the awards of this Division. We may, however, adopt the negative of the proposition and decide that such position is not permitted to be excepted from Rules 27 and 28.

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 the agreement was violated.

AWARD

Claims sustained in conformity with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of January 1954.