

Award No. 8380
Docket No. CL-8168

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, Referee

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

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

(1) That the Carrier violated the rules of the current clerks' Agreement when, in reorganizing forces in districts and agencies to conform to the 40-hour week rules of the working Agreement, effective January 1, 1953, it arbitrarily discontinued descriptive titles on clerical positions.

(2) That the Carrier now be required to properly classify the positions by restoring descriptive titles such as were formerly in effect.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 1, 1953, the effective date of the working Agreement, clerical employees had a 40-hour work week but the provisions of the so-called 40-hour week rules were not applicable on Pullman property. With the adoption of and in order to implement provisions contained in such rules, a Memorandum Agreement (Exhibit "M") was executed between the parties outlining the procedure to be followed in effecting the necessary changes which would eliminate so far as possible disrupting forces for an extended period. Clerical positions had descriptive titles before and after the effective date of the working Agreement; however, when reorganizing forces under the provisions of the aforementioned Memorandum Agreement, the Carrier discontinued classifying positions with descriptive titles such as Chief Clerk, Car Clerk, Signout Clerk, etc., and substituted therefor titles of Clerk #1, Clerk #2, Relief Clerk #3, etc.

The Organization protested this action by the Carrier and progressed the matter as a formal claim, which was denied and subsequently appealed to the highest officer to whom appeals may be made. Upon receipt of denial from the Appeals Officer, the Organization advised Carrier that the claim would be progressed to the Adjustment Board unless Carrier notified the Organization that it desired to discuss the matter further. The subject was reopened at request of the Carrier and discussed in several conferences between the

negotiated Memorandum Agreement, dated February 27, 1953, and that, therefore, there could have been no violation of the rules of the Clerk's Agreement in the matter complained of. The Company also has shown that the simplification of titles was comprehended by the terms of the Memorandum Agreement and that such simplification was necessary in the interest of effective and efficient implementation of the new clerks' working Agreement.

Further, the Company has shown the weakness of the Organization's position is borne out by the fact that it has made no money demand in its claim, obviously realizing no clerical employe has been arbitrarily deprived of his established seniority rights with respect to any clerical position. No Pullman employe has been shown to have been deprived of his chance to occupy a clerical position because of change in title of such position. Finally, the Company has shown that the awards of the National Railroad Adjustment Board clearly set forth that the parties are confined by the language of their Agreements.

In view of the fact that the Organization has been unable to show there has been any violation of the rules Agreement in the matter complained of, its claim is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The Clerks' Organization became the bargaining agent for the Carrier's clerical employes on March 16, 1950 and the agreement identified was the first contractual agreement between the parties, effective January 1, 1953.

A 40 hour week was placed in effect by this Carrier prior to the effective date of the applicable agreement. However, in placing the 40-hour work week in effect certain difficulties were encountered by both parties and a Memorandum Agreement of February 27, 1953 was entered into to alleviate these difficulties.

That Memorandum Agreement reads as follows:

"CONCERNING REORGANIZATION OF FORCES IN DISTRICTS, AGENCIES AND REPAIR SHOPS TO CONFORM TO PROVISIONS OF THE WORKING AGREEMENT, EFFECTIVE JANUARY 1, 1953, COVERING PULLMAN CLERICAL, OFFICE, STATION AND STOREHOUSE EMPLOYES.

"WHEREAS the parties recognize that the original rearrangement of forces in districts, agencies and repair shops to conform with the provisions of the new Agreement, effective January 1, 1953, entails a large number of changes in positions, such as re-assignment of duties from one position to another, changes in rest days and changes in starting times of shifts;

"IT IS THEREFORE AGREED by and between The Pullman Company and its clerical, office, station and storehouse employes, represented by the Brotherhood of Railway and Steamship Clerks,

Freight Handlers, Express and Station Employees, that the initial assignment of positions in each district, agency and repair shop where reorganization changes occur will be handled in accordance with the provisions of this Memorandum Agreement, in the following manner:

"Management will list separately all Groups 1 and 2 positions at each point in descending order of rate of pay, showing title, assigned hours of service, assigned meal period, assigned rest days and description of principal duties. The employees on the roster of each group at each point will be conferred with in seniority order. Each individual will signify the position desired and assignments to the positions in the reorganized district, agency or repair shop will be made on the basis of seniority, fitness and ability, as provided in Rule 9 of the working Agreement, effective January 1, 1953.

"It is further understood that assignments to positions as outlined above will be confined solely to the original reorganization of districts, agencies and repair shops. After such reorganization has been completed, subsequent changes in forces will be handled in the regular manner prescribed in the applicable rules of the working Agreement.

"Signed at Chicago, Illinois, this 27th day of February, 1953."

Certain Rules of the current Rules Agreement were alleged by the Organization to have been violated.

These rules were:

"**RULE 1. Scope.** These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees. Positions or work coming within the scope of this Agreement belongs to employees covered thereby and nothing in this Agreement shall be construed to permit the removal of positions or work from the application of these rules, nor shall any officer or employee not covered by this Agreement be permitted to perform any clerical, office, station or storehouse work **which is not incident to his regular duties**, except by agreement between the parties signatory hereto.

"Whenever the work of clerical, office, station and storehouse employees is performed on or by a mechanical device, machine or communication system, employees covered hereby shall be the operators thereof.

"(a) For the purpose of this Agreement, the craft or class of clerical, office, station and storehouse employees is divided into the following groups:

"Group 1. Clerical supervisory employees, such as chief clerks, group supervisors, head clerks, storekeepers, district commissaries, and other supervisory employees listed in paragraph (b) of this rule; also claims adjusters, traveling auditors, field secretaries, nurses, draftsmen, certain accountants, and other employees listed in paragraphs (b) and (c) of this rule. * * *"

"RULE 2. Definition of clerk. (a) Employees who regularly devote not less than 4 hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, rendition of bills, reports and statements, handling of correspondence and similar work, and to the operation of photostat, typewriters, adding and calculating machines, bookkeeping, accounting, key punch, timekeeping, and statistical machines, dictaphones, teletype and all other similar equipment or devices used in the performance of clerical work or in lieu of clerical work shall be known as clerks.* * *"

"RULE 10. Bulletined Positions. (a) All new positions and vacancies (except those of 30 days or less duration) shall be promptly bulletined in agreed upon places accessible to all employees affected for a period of 5 calendar days (General Offices and Repair Shops 3 working days) in the seniority roster where they occur, bulletin to show location, title, description of principal duties, rate of pay, assigned hours of service, assigned meal period, assigned rest days and, if temporary, the probable or expected duration. * * *"

"RULE 66. Established Positions. Established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

The basis of the claim is set forth by the Organization as:

"Clerical positions had descriptive titles before and after the effective date of the working agreement; however, when reorganizing forces under the aforementioned Memorandum Agreement, the Carrier discontinued classifying positions with descriptive titles such as Chief Clerk, Car Clerk, Signout Clerk, etc., and substituted therefor titles of Clerk #1, Clerk #2, Relief Clerk #3, etc."

The reason for the claim as stated by the Organization was that the new titles made it extremely difficult to trace jobs, pay rates or the classifications themselves, because now the titles were in no way descriptive of the job. Descriptive titles had been in effect for many years.

The Organization at the request of the Carrier submitted a list of suggested titles for jobs on several of the properties. A comparison of the titles suggested by both the Carrier and the Organization shows agreement on many and close similarity on many. There are several in which there is a disparity. A comparison sheet was presented of the suggested titles in the St. Louis District. This comparison sheet indicates the old title, the title proposed by the Carrier and the title proposed by the Organization. The list proposed by the company indicates a reduction of many titles to just that of "Clerk." In some instances there is accord. Each job bears a number of 66-1 to 66-72. Interesting are the proposals in a few of the jobs:

No.	Old	Carrier Proposal	Organization Proposal
66-6	Asst. Chief Clerk	Clerk	Signout Clerk
66-8	Clerk (1)	Clerk	Lost Property Clerk
66-19	Clerk (4th)	Clerk-Stenographer	Clerk-Stenographer
66-31	Chief Clerk	Clerk	Commissary Clerk

The Board agrees with the principles of law and interpretation of contracts which were cited as one cannot do "by indirection that which is prohibited by direction" (Awards 5560, 5773 and 6312). The meaning of a written agreement must be gathered from the language used in it where it is possible to do so. The meanings of written contracts are not ambulatory and subject to undisclosed or rejected intentions of either of the parties. Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible. (Awards 6856 and 6872)

Although mindful of the Rules set forth in the Rule agreement we are of the opinion that the Memorandum of Agreement dated February 27, 1953 is governing in the instant case because the actions of both the Carrier and the Organization regarding the jobs in question stemmed from the changes necessary under the 40-hour week agreement and are contemplated within the aforesaid Memorandum.

A study of this Memorandum of Agreement indicates that it concerns the "Reorganization of forces in Districts, Agencies and Repair Shops to conform to the provisions of the Working Agreement, effective January 1, 1953." The first paragraph advises that both parties realized that some rearrangement of forces, a large number of changes in positions, changes in rest days, starting times and shifts were necessary.

The second paragraph provides that such changes shall be made in conformity to the provisions of this Memorandum of Agreement. The third paragraph requires management to separately list all positions in Group 1 and Group 2 (Clerks positions are in Group 1) at each point in descending order of rate of pay and to show the title, assigned hours of service, assigned meal periods, assigned rest days and to describe the principal duties. The employees at each point were to be called into conference in order of seniority and each individual was to signify the position desired. Management was then required to assign the employees to the positions in accordance to seniority, fitness and ability as provided in Rule 9 of the Agreement which covers Promotions, Assignments and Displacements.

The last paragraph of the Memorandum is significant. It provides that assignments to positions as outlined above will be confined solely to the "original reorganization of districts, agencies and repair shops." It further provides that after such reorganization has been completed any "subsequent changes in forces will be handled in the regular manner prescribed in the applicable rules of the working agreement."

Award 6826 was cited and that award provided that the Carrier "violated the Agreement when it undertook to abolish the clerical positions embraced in the claim and to establish new positions in lieu thereof, and . . . it should now be required to classify the several positions here involved by appropriate bulletins describing the preponderating duties of such positions, in accordance with provisions of the Agreement . . ."

The Board therein also said "There is no magic in the title of a position, but the regularly assigned occupants, however designated, may not be arbitrarily deprived of their established seniority rights with respect thereto without a resulting violation of the Agreement. Rule 5(e) of the agreement provides that bulletins to fill vacancies shall show the location, title, rate of pay, and predominating duties of (the) position. Even though the Carrier may use whatever name or title it may elect to designate a position, neverthe-

less when such a position is regularly filled the employees' right to occupy it cannot be taken from him by a mere change in such title." Rule 10 of the current contract has a similar provision regarding Bulletined Positions.

The Board is of the opinion that the Memorandum of Agreement of February 27, 1953, temporarily abrogated and waived the Rules Agreement of the parties during the time of and for the purposes as complained of herein and that the duty to classify and title jobs was taken outside of the Rules Agreement.

Nowhere in the Memorandum of Agreement is there mention of the changes contemplated being a matter of negotiation between the parties. The necessity for these changes is recited and the duty of Management to "list . . . to show title, assigned hours of service, assigned meal periods, assigned rest days and to describe the principal duties" is imposed. Not having been relinquished by this Memorandum of Agreement, we hold that it is not only the right of Management but its duty to make the adjustments contemplated and necessary.

The employees are fully protected by any and all rights they may have under all the rules of the regular agreement in any manner whatsoever after the initial reorganization was completed. Memorandum of February 27th merely covers the initial changes.

We think the Memorandum gives the Carrier the right to reorganize and reclassify the initial reorganization and that its terms temporarily supersede the Rules Agreement for the purposes named.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1958.