

Award No. 8532

Docket No. CL-8025

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily, without conference, negotiation or agreement between the parties, removed the position of Dispatchers' Clerk from the scope and application of that agreement and subsequently placed the work of that position within the scope and application of the Train Dispatchers' Agreement with the title classification of "Supervisor of Crews and Assignments".

2. The position of Dispatchers' Clerk and the work attached thereto be returned to the scope and application of the Clerks' Rules Agreement and the employees covered thereby.

3. Employee J. D. Brown's name be restored to District No. 37 seniority roster with seniority unimpaired.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to 1931 there was in effect at Portage, Wisconsin, a position of Dispatchers' Clerk which was a position fully covered by the Clerks' Rules Agreement.

In 1931 that position was discontinued at Portage and in 1932 a position of Dispatchers' Clerk was established at LaCrosse, Wisconsin. That position likewise was one fully covered by the Clerks' Rules Agreement.

Employee J. D. Brown, seniority date of August 1, 1920, was the regular occupant of that position at Portage and upon the establishment of the Dispatchers' Clerk position at LaCrosse was assigned to and occupied that position.

During all of those years the name of Employee J. D. Brown appeared on the clerks' seniority roster with the title classification of Dispatchers' Clerk.

All data contained herein has been presented to the employees.

We respectfully request opportunity for oral presentation.

(Exhibits not reproduced.)

OPINION OF BOARD: The record in this case reveals the following essential facts: In 1932 a Dispatcher's Clerk position covered by the Clerks' Agreement was established at LaCrosse, Wisconsin and filled by J. D. Brown, who held clerical seniority from August 1, 1920. In January 1936 the position of Supervisor of Crews and Assignments was created at this location and Mr. Brown was assigned thereto. By agreement between the Carrier and the Clerks' General Chairman this was considered an excepted position. Thereafter Brown's name and job title continued to appear on the Clerks' seniority roster but with a specific notation that he had been promoted to an excepted position. This was in accordance with Rule 3(d) of the Clerks' Agreement then in effect.

In October 1945 Carrier and the American Train Dispatchers' Association reached agreement to classify the subject position as a train dispatcher's position under the Dispatchers' contract, with the understanding that Brown could remain therein. It was further agreed, however, that when this employee vacated the position it would be filled in accordance with the Dispatchers' Agreement without changing the rate of the position at the time Brown vacated same.

In January 1946 Carrier and the Clerks executed a new agreement. In March 1946 the Clerks protested that Brown was shown on the clerical roster as holding an official position as Supervisor of Crews and Assignments. It was urged that this was not an official position, and was not given an excepted status under the Organization's new contract. Carrier's Superintendent replied on July 1, 1946 that the listing of J. D. Brown as holding an official position was in error and stated the asterisks would be removed from his name on the next seniority list. On July 18, 1946 the Superintendent wrote the Organization that his July 1 letter was in error, since the position held by Brown was under the scope of the Dispatchers' Agreement.

The question to be decided is whether Carrier improperly removed a position from the scope of the Clerks' Agreement and placed the work of said position within the scope of a different contract. As must already be evident from the foregoing review of the pertinent facts, the petitioning Organization agreed in 1936 that the position of Supervisor of Crews and Assignments was outside its Agreement. For ten years this situation existed with full knowledge of the Petitioner. There is no claim that by 1945 or 1946 the work of the position had changed so that it came within the scope of the Clerks' Agreement, in contrast to the situation in 1936 and the succeeding years. Petitioner affirmatively disavowed claim to the position when it was created but now urges this Board, in effect, to assist it in revoking this disavowal.

This we cannot do. The claim is without merit and must be denied.

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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1958.