

Award No. 10022

Docket No. CL-9370

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

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

**THE NORTHERN PACIFIC TERMINAL COMPANY
OF OREGON**

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

(1) The Carrier violated and continues to violate the provisions of the Clerks' Agreement when, on September 5, 1955, it unilaterally established a position in the Depot Yard Office with title of Special Assistant to the Manager as excepted from the scope and operation of the Clerks' Agreement and assigned work thereto which is covered by the Agreement; and,

(2) That the involved work shall be restored to the scope and operation of the Clerks' Agreement and, as a penalty for this violation, Assistant General Yardmaster Clerk Bessie White and/or her successors, be compensated eight (8) hours' pay at the rate of time and one-half of Chief Clerk's rate for September 6, 1955, and each day thereafter until the Agreement violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a terminal switching facility at Portland, Oregon, which embraces approximately 60 regularly assigned positions. The work to these positions is fully covered by the terms of the Clerks' Agreement. This operation is in charge of a General Yardmaster, an official of the Carrier, excepted from the scope and operation of the Clerks' Agreement.

For a period of over 30 years the supervision of clerks in the Depot Yard Office has been assigned to position of Chief Clerk to the General Yardmaster. On July 16, 1945, the effective date of the current Agreement, this position was changed from a partially excepted position (excepted from the promotion, assignment and displacement rule) to a position fully covered by all the rules of the Agreement. The assigned hours of this position are from 7:30 A. M. to 4:30 P. M. Monday through Friday, rate of pay \$17.58 per day. The present incumbent thereof is C. P. Mellinger. The duties and qualifications of this position as described in the job bulletin are as follows:

"Duties: Making necessary reports and supervising clerks at the Depot Yard and Lake Yard. Qualifications: Must be familiar with the

the latter was established, without any complaint or objection from the Brotherhood until the position was reestablished in September 1955;

4. An IBM Agreement was signed by the parties hereto on May 12, 1954, covering installation of IBM machines in Depot Yard Office, but no mention was made therein of the position of Special Assistant to the Manager, nor was any objection raised at that time by the Brotherhood against the establishment of that position on February 16, 1954, three months previously;

5. The position of Chief Clerk in Depot Yard Office **was not abolished**, but continues to exist and function as in the past; and none of the duties of the Chief Clerk has been usurped by the Special Assistant to the Manager, *as claimed*;

6. The duties, authority, classification, qualifications, requirements, and salary of the Special Assistant to the Manager's position are unquestionably on a higher level than the Chief Clerk and certainly beyond the Clerks' Agreement;

7. Rules 1 and 2 do not prevent the establishment of the official position in question, nor do they cover the duties thereof;

8. Time and one-half is not correct for a penalty claim except on holidays;

9. The claim for "each day thereafter" should be limited to the days actually worked by Mr. Blackburn if a payment is to be awarded;

10. Claimant White was absent from the property much of the time involved in the claim, therefore, was not available for service of any kind; that the Chief Clerk was already on duty most of the dates of the claim, and there was no need for two Chief Clerks those dates; that Mrs. White is not qualified for either the Chief Clerk's or the Special Assistant to the Manager's position; that claim for her "successors" should be disregarded as too indefinite and uncertain to be considered; and

11. The claim is wholly without merit, therefore, it should be denied in its entirety, and the Carrier so requests.

All data herein have been submitted to, or are known by, the Brotherhood.

(Exhibits not reproduced)

OPINION OF BOARD: The Carrier is a terminal railroad in the City of Portland, Oregon, where it operates two main yards—the Depot Yard and the Lake Yard—which are about two miles apart. It employs approximately sixty-eight clerks, all of whom are covered by the applicable Agreement.

The claim involves the Depot Yard office. On September 5, 1955, the Carrier established the position of Special Assistant to the Manager as an excepted position. The claim is based on the contention that C. H. Blackburn, who formerly occupied the covered position of Assistant Comptroller and was appointed to the newly created position referred to, was "working supervisor on the first trick", has "taken over the supervisory duties of the Chief Clerk", and was "performing supervisory work coming under the scope of the Agreement".

The Carrier contends that the "position in dispute is an official or managerial one within the Carrier's discretion to establish and therefore excepted

from the coverage of the applicable Agreement"; that "No clerical work has been removed from the scope of the Clerk's Agreement other than that which is allowed by the Agreement itself"; that "The Employees have failed to meet their burden of proof in establishing any Carrier violation of the Agreement"; and that "Even if Claimant were entitled to any compensation it would only be at the pro rata rate."

Basically, with regard to the alleged invasion of the duties of the Chief Clerk by Mr. Blackburn in his capacity of Special Assistant to the Manager, the record confronts us with a sharply disputed factual issue as to which the Claimant has the burden of proof. While tacitly conceding that the Chief Clerk's position was not abolished, the Employees assert that:

"What the Carrier has actually done in this case is to remove the supervisory work from a supervisory Chief Clerk position and assign same to a newly established position outside the Agreement, and thereby, to all intents and purposes, establish a supervisory Chief Clerk's position outside the Agreement and reduce the former Chief Clerk position to one of relative importance to that of an Assistant Chief Clerk, which it is prohibited from doing under Rule 56 of the Agreement."

On the other hand, and in sharp contrast, the Carrier asserts that:

"The position of Chief Clerk is still in existence, and continues to function as it has in the past. The incumbent thereof still supervises the clerks as in the past, and makes his 'necessary reports' as stipulated in Bulletin 3544 of August 5, 1954, referred to in General Chairman Hess' letter dated December 12, 1955. (Carrier's Exhibit C). He is just as busy with his usual duties as ever. The Carrier repeats that it has not abolished the Chief Clerk's position, nor has it taken away the duties thereof to assign to the official position held by Mr. Blackburn."

On careful examination of the record we cannot say that the weight of the evidence sustains the assertions of the Employees. Emphatic reliance is placed by the Employees on the Carrier's refusal to acquiesce in their request for a joint check of the work being performed by Mr. Blackburn. No inference adverse to the Carrier may fairly be drawn from such refusal where, as here, the disputed duties were fully disclosed and discussed in conference and in correspondence on the property, and the record before us explains and accounts for such duties.

The record does not permit us to discount the position of the Carrier that the supervisory duties performed by Mr. Blackburn as Special Assistant to the Manager were of a higher supervisory and administrative level than that of the Chief Clerk and at least equal to the level of supervision exercised by the General Yardmaster who is a Carrier official not covered by the Agreement. The amount and character of the supervision required by the Carrier at such a supervisory level is clearly within its prerogative. See Awards 4992, 7059.

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 Employe involved in this dispute are respectively Carrier and Employe 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 24th day of July 1961.