

Award No. 10437

Docket No. CL-9572

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES
GRAND TRUNK WESTERN RAILROAD COMPANY**

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

(a) Carrier violated and continues to violate the Agreement between the parties, effective January 15, 1955, when it discontinued a fully covered Relief Stationmaster Position at Brush Street Station, Detroit, Michigan, and created in lieu thereof a new position of Relief Stationmaster by bulletin dated August 7, 1956, and assigned it to an employe not covered by the Clerks' Agreement by bulletin dated August 18, 1956, on the contention that the newly created position was not covered by the seniority provisions of the Agreement; and

(b) That Carrier shall now assign the Relief Stationmaster position to Clerk M. P. Basney and compensate him for all monetary losses sustained on August 18, 1956 and each subsequent work day thereafter until the condition complained of is corrected.

EMPLOYEES' STATEMENT OF FACTS: The locale of this dispute is Carrier's Brush Street Passenger Station at Detroit, Michigan, covered by Clerical Seniority District No. 49. Claimant M. P. Basney has a seniority date of August 31, 1942, in this District and is assigned to a Ticket Clerk position.

Prior to the discontinuance of the fully scheduled position of Relief Stationmaster-Baggage Recorder effective August 3, 1956, the rates of pay, days of rest, work weeks, and incumbents, with their seniority dates, of the two Stationmaster and Relief Stationmaster-Baggage Recorder positions were as follows:

1. Edward R. Vreeland, seniority August 17, 1909, Stationmaster, work week Monday through Friday, 7:40 A. M. to 4:40 P. M. daily, rest days Saturday and Sunday, rate \$2.51 per hour.

2. John R. Kramer, seniority October 19, 1917, Night Stationmaster, work week Wednesday through Sunday, 4:40 P. M. to 12:40 A. M., rest days Monday and Tuesday, rate \$2.45 per hour.

employees but also over "employees not covered by this Agreement". Inasmuch as the last clause of Rule 18 is not included in Rule 1(a) it follows that clerical employees do not have preference over other employees in the filling of "partially excepted" positions.

This case has been handled in the usual manner on the property up to and including the highest officer designated to handle claims and grievances and has been declined.

All data contained herein has in substance been presented to the employees and is a part of the matter in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Because the Relief Stationmaster, Brush Street Station, Detroit, Michigan, was appointed Day Stationmaster, the former position was bulletined on August 7, 1956. Claimant, a Ticket Clerk, with clerical seniority, bid for the position. It was awarded to R. T. Thiel, Yardman, who had no prior clerical seniority at that time.

The Relief Stationmaster position bulletined on August 7, 1956 had changed duties. Instead of working in the Baggage Room on the fifth day, the incumbent assisted the Day Stationmaster on that day. For that reason, the position's rate was increased. In addition, the rest days of the position were changed from Thursday and Friday to Wednesday and Thursday.

The claim is based upon contentions that the Relief Stationmaster position was fully covered by the applicable rules agreement, that Carrier's action in awarding the position to Thiel violated Rules 1 and 1(a), and that the attempt to change the duties of the position contravened Rule 60.

The disputed position was established in 1949 to relieve two Stationmasters on their rest days and was assigned a fifth day in the Baggage Room. Petitioner claims this fifth day assignment was made pursuant to a verbal understanding for full coverage of the position under the Clerk's agreement. Such an understanding is denied by the Carrier. According to the Carrier, the Relief Stationmaster position was established because, as a result of the 40-hour work week, the two Stationmaster positions were reduced to five days per week, and the relief position was assigned one day as Baggage-Recorder (a fully covered position) to fill out a five-day work week.

The record is insufficient to establish the alleged verbal agreement for full agreement coverage of the position; nor can it be inferred from the fact that the position worked one day in the Baggage Room. In any event, controlling effect must be given to the written agreement of the parties. Under Scope Rule 1, the parties have provided explicitly that the Stationmaster position, Brush Street Station, Detroit, shall be excepted from certain rules including Rule 4, Exercise of Seniority, and Rule 5, covering promotion, assignments and displacement. The position of Relief Stationmaster, as such, is not specifically mentioned either in the list of partially excepted positions or in the groups of classes of employees covered.

The following provisions of Scope Rule 1 are among those applicable to the Stationmaster position referred to:

"Positions within the scope of this agreement belong to the 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, except by agreement between the parties signatory hereto

* * *

"(a) In filling positions listed above, preference over non-employees shall be given to qualified employees coming under the provisions of this agreement.

"(b) New positions and vacancies of more than thirty (30) days' duration in the offices and positions listed above will be bulletined, such bulletins to be posted for ten (10) days only in the district in which the vacancy occurs. . ."

Rule 60 states that:

"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."

Petitioner interprets the word "non-employees" in Rule 1(a) as applicable to Thiel because he was employed by the Carrier as Yardman outside the Clerks' agreement. However, the agreement here, which became effective July 15, 1955, indicates that the parties thereto recognized a distinction between "non-employees" and employees who were not covered by its rules. In Rules 11 and 18 they established preferences for certain covered employees over "non-employees and/or employees not covered by" the rules of the agreement. By these distinctions, the parties manifested their intent that their usage of the term "non-employees" in their agreement with respect to preferences was not applicable to and did not include employees of the Carrier outside the coverage of the agreement. For these reasons, Award 4338 cited by the Petitioner, is not applicable here.

It cannot be said that the disputed position was removed from the agreement. The record shows that Thiel relinquished his Yardman rights in the Trainmen's Organization as well as his seniority as a Yard Conductor on the Detroit Terminal roster in order to work the position under the agreement. Nor does the record show that a position was discontinued and a new one created covering the same class of work to effectuate a reduction in the rate of pay or to evade application of the rules agreement.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1962.