

Award No. 11334

Docket No. CL-10973

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(a) The Carrier, on March 6, 1953, abolished the Night Station Master position at Des Moines, Iowa. August 26, 1957, the position of Night Station Master was re-established and was worked by Clerk F. X. Witkowski, pending vacancy being bulletined; however, the Carrier again abolished the position after completing work on August 30, 1957, and then violated the clerical Agreement when on October 21, 1957, they established a position under the title of Assistant to the Trainmaster and assigned the general duties of the Night Station Master to this position.

(b) Claimants F. X. Witkowski be allowed eight (8) hours' pay for each Friday, Saturday and Sunday, and four (4) hours each Wednesday; and J. P. Steel eight (8) hours for each Monday, Tuesday and Thursday, and four (4) hours each Wednesday, at punitive rate, based on monthly rate of \$381.24, effective October 21, 1957, and each week thereafter. Also add to this general increases effective November 1, 1957, and all subsequent increases to be added to the above rate.

(c) Position of Night Station Master be re-established and bulletined to employees covered by the clerical Agreement.

EMPLOYEES' STATEMENT OF FACTS: March 6, 1953, Carrier abolished the position of Night Station Master at Des Moines, Iowa, and the Carrier at that time furnished a statement which was supposed to be a correct statement of the duties on this position and disposition of same, and we quote for the record statement made by Superintendent C. H. Hardwick:

"CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

"Des Moines, Iowa, Feb. 27, 1953

**"Title of Position — Stationmaster
Station Location — Des Moines, Ia.
Office Location — Des Moines, Ia.
Pay Rate — \$303.36 per mo.**

Incumbent J. P. Steele

The incumbent of the Assistant to the Trainmaster position is performing no work that was previously performed by the Night Stationmaster. The work previously performed by the stationmaster as shown in our Exhibit "B" continues to be performed by our clerical force at the passenger station.

In handling the instant claim on the property, the organization contended without offering any evidence that the Assistant to the Trainmaster, established October 21, 1957, was performing the same work as the former Night Stationmaster and the incumbent of this position was using the same office. While it may be true that the Assistant to the Trainmaster uses the same office that the former stationmaster did while he is performing his supervisory duties in the vicinity of the Des Moines Passenger Station, the Terminal Trainmaster and the Assistant Trainmaster, likewise, use this office when it is necessary for them to perform their duties at Des Moines Passenger Station. Obviously, the mere fact that the Trainmaster or Assistant to the Trainmaster use the same office as the former stationmaster is not evidence that these supervisors are performing stationmaster's work. The employees have quoted no rule in their agreement to support their position, nor have they furnished any evidence to support their statement that the Assistant to the Trainmaster is performing Night Stationmaster's work.

We assert that the burden of proof is upon the petitioner to show by proper evidence that their agreement is being violated. This, they have not done in handling the case on the property.

For the reasons advanced above, the Carrier submits that the claim is without merit and respectfully requests the Board to so hold.

(Exhibits not reproduced.)

OPINION OF BOARD: The pertinent facts are set forth in paragraph (a) of the Statement of Claim, and need not be repeated here.

The charge of violation of the Agreement here is limited by Petitioner to the allegation that on October 21, 1957, the Carrier established the position of Assistant to the Trainmaster and assigned the general duties of the Night Station Master to that position.

Specific rules relied on are the Scope Rule and Rule 69 (Interpretations 1 and 2). The import of these rules, insofar as this case is concerned, is that work belonging to a position covered by the Agreement may not be removed therefrom by changing the title of the position.

The Scope Rule lists "Station Masters" in Group 1 of positions covered by the Agreement. There is no description of the duties of such positions. Hence it becomes necessary to examine the record in this case to determine what duties traditionally, customarily and exclusively were required of the position of Night Station Master (Awards 7322, 8793, 10014, 10515).

The evidence shows that when the position was abolished in 1953, more than half (4 hours-15 minutes) of the Night Station Master's working time was consumed in handling baggage, calling trains, answering inquiries about trains, handling emergency cash fares and U.S. mail, and issuing instructions to janitors and ushers. (See Carrier's Ex. "B").

Petitioner has introduced evidence consisting of a series of letters and replies between the Superintendent and the Night Station Master which indi-

cates that from time to time in 1950 and 1951, the latter was being held responsible, in part, for certain supervisory duties in connection with the arrival and departure of trains at the passenger station.

Other than establishing that the hours of work of the Assistant to the Trainmaster coincided with those of the Night Station Master job, and that the Assistant occupied the latter's office and used the telephone there, Petitioner has produced no evidence of probative value showing what duties of the abolished position were assumed. It is not enough to assert that because the Assistant exercised supervisory authority and certain supervisory duties had been required of the Night Station Master in the past, it follows that the former took over the latter's "general duties", as alleged. Nor is the Board impressed with the argument that anyone familiar with the operation at Des Moines would know this to be true. (See Award 10067). It is obvious that the use of the office and telephone, standing alone, cannot be said to be proof that any duties of the job were assumed.

After weighing all the evidence of record, the Board finds that the position of Night Station Master did involve some degree of supervisory responsibility over trains and equipment but that others shared that responsibility (Trainmaster and Yard forces) to an extent which precludes a finding that such work was solely and exclusively the property of the position; that a preponderance of the duties usually and customarily performed by the occupant of the position was properly distributed among other covered employees; and, finally, that Petitioner has failed to show by evidence of probative value that the Assistant to the Trainmaster assumed the general duties of the abolished position.

For these reasons, the claim is without merit and must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 26th day of April 1963.