

Award No. 11834

Docket No. CL-10260

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

THE DENVER UNION TERMINAL RAILWAY COMPANY

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

(1) The terms of the current Agreement were violated when a position titled "Assistant General Foreman" was abolished on January 29, 1957, and the work therefrom turned over to Mr. Max Bramble, a lower rated employee.

(2) The terms of the current Agreement were violated on January 29, 1957, when a position titled "Assistant Baggage Agent" was created and Mr. L. J. Sak was assigned thereto without bulletin.

(3) That Mr. Max Bramble, and/or his successors, be paid the difference between the rate of his position and the position of Assistant General Foreman which was abolished, until the proper rate is assigned to said position or the Assistant General Foreman's position is restored and resumes work previously assigned thereto.

(4) That Mr. Carl Brunner be paid an additional day's pay at rate of Assistant General Foreman for each and every day, retroactive sixty days, until position occupied by Mr. Sak is bulletined.

EMPLOYEES' STATEMENT OF FACTS: On January 29, 1957, a position of Assistant General Foreman, covered by all rules of our Agreement was abolished and during the same period a new position of Assistant Baggage Agent was established and Mr. L. J. Sak, an employee holding no seniority rights under our Agreement, was assigned to this new position without bulletin.

The supervisory work of the abolished position of Assistant General Foreman, previously occupied by Mr. Carl Brunner, was transferred to the newly created position of Assistant Baggage Agent. This supervisory work amounted to approximately six and one-half hours per day.

The balance of the work from the abolished position of Assistant General Foreman that was not transferred to the new position of Assistant Baggage

by an Assistant General Foreman and it was only with the abolishment of Mr. Brunner's position that the work was assigned to Mr. Bramble. Prior to the abolishment of this position, Mr. Brunner was also available to answer questions and handle complicated situations arising in the office and on the check counter. Since the abolishment of the position, Mr. Bramble has been required to assume some of the handling of these matters because no one is available in the office to refer situations to."

would justify the rate of pay for assistant general foreman, and furthermore, when this position was abolished the assistant general foreman duties were assigned to assistant general foremen, and the minor clerical duties were assigned to the clerks in the Mail and Baggage Department. In other words, the work performed by this position was assigned to employees under the Clerks' Agreement who had performed this work prior to the establishment of this position. The traditional duties of a foreman or an assistant general foreman are to supervise a group of men. It is certainly not a violation of the current Clerks' Agreement to require this foreman under the Clerks' Agreement to perform some clerical work to complete his tour of duty, and when the services of a supervisory nature are no longer required for this work to revert to the clerical employees under this contract who had previously performed this work. Claim must be denied.

All data in support of Carrier's position have been presented to the employees and made a part of the question in dispute. Carrier reserves the right to answer any data not hereto submitted to it by the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 1, 1957, Carrier created a new position of "Assistant Mail and Baggage Agent" which it declares is an "official" position.

On January 29, 1957, Carrier abolished a position of "Assistant General Foreman" which was covered by all the rules of the confronting Agreement.

CONTENTIONS OF PARTIES

Petitioner contends: (1) six and one-half hours of supervisory work per day of the abolished position was assigned to the newly created position; (2) one and one-half hours of clerical work per day of the abolished position was assigned to the clerical force, the majority thereof being assigned to Claimant Bramble; (3) the new position was created for the purpose of evading the application of the rules of the Agreement in violation of Rule 61; and (4) the clerical work of the abolished position which was transferred to Claimant Bramble is "higher rated" work.

Carrier contends: (1) the occupant of the new position "has not performed any duties formerly performed by or exclusively reserved to any clerical position under the scope of the Clerks' Agreement; and (2) "The clerical work performed by the [occupant of the abolished position] . . . was of a minor nature and fill-in work."

THE CRUCIAL ISSUES

The crucial issues in this case are whether: (1) six and one-half hours of supervisory work per day, formerly performed by the occupant of the

abolished position, was assigned to the new position; and (2) the clerical work of the abolished position assigned to Claimant Bramble was "higher rated." If the findings as to these issues are not affirmative, Petitioner's case collapses.

BURDEN OF PROOF

In the record Petitioner has averred, by statements of conclusions, that the work of the abolished position was assigned as set forth in the statement of the issues, *supra*; and, Carrier has denied. Thus, issue was joined and Petitioner put to its proof.

Statements of conclusion, unless admitted by the adverse party, have no probative value. Where, as here, there are no admissions, Petitioner must adduce factual evidence in support of its contentions. The conclusion to be drawn from the factual evidence is within the judgment of the Board.

CONCLUSION

The record is void of any factual evidence to support Petitioner's contentions. We will deny the claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November, 1963.