

Award No. 11854

Docket No. CL-11538

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express & Station Employees that:

1. The carrier violated and continues to violate the Clerks' Agreement of Sept. 15, 1957 when it abolished, effective May 1, 1958, the position of Passenger Service Supervisor, Terminal Sup't's office, Grand Central Station, New York,
2. Passenger Supervisor Mr. George Osterberg be restored to his position which existed prior to April 30, 1958, and that he shall be compensated for all wage loss sustained by him at the regular rate of his position, \$552.75 per month (plus any subsequent general wage increases applicable to such positions, less the amount of such earnings that may have been paid to him subsequent to May 1, 1958.

EMPLOYES' STATEMENT OF FACTS: On April 30, 1958, Passenger Supervisor Geo. C. Osterberg was notified that his position, salary \$552.75 per month, would be abolished effective May 1, 1958. The position is one within the scope of the Agreement between the Carrier and the System Comm. of the Brotherhood effective Sept. 15, 1957.

Subsequent to the abolishment of this position, the duties were assigned and thereafter performed by Ass't Trainmaster, Mr. H. F. Hopkins as follows:

Check changes in daily train consists.

Check notes for equipment turns and any special moves.

Take several copies of next day's consist for car department and special notices (V Messages) for next day for clipboard in booth at track No. 20.

management alone may determine. This is so fundamental to the fixing of responsibility of management for the efficient operation of its railroad that to rule otherwise would operate to destroy the very responsibility with which management is charged.

* * * * *

"As we have hereinbefore said, the determination of the amount of supervision to be employed is the prerogative of management. Management has the right to reduce its supervisory force as it did."

IV. Summary and Conclusion.

There is no prohibition in the applicable schedule preventing the abolishment of unnecessary positions. In fact, Rule 45 prescribes the method for reducing forces. Apparently there is no dispute that the position was not abolished in accordance with the rules. Otherwise stated, the issue involved in the instant dispute is Carrier's right and obligation to abolish a position no longer deemed necessary to efficient operation and transfer its remaining duties to others entitled to perform them. This is what happened in the instant case.

The position of Passenger Service Supervisor, second tour, was found to be unnecessary by discontinuance of passenger trains and realignment of supervision afforded the terminal. The duties of the abolished position were primarily outside platform supervision of trains and personnel. Through readjustment of operating forces, such supervisory duties as remained were transferred to the Trainmaster who had always performed such duties—not only at other hours but concurrently with the occupant of the abolished position.

It is incumbent upon the Employees to establish beyond a doubt that the work performed by the Trainmaster belongs exclusively to and must be performed by employees under the Scope of the applicable schedule. No such conclusion can result from the facts in the instant case. As previously stated, nowhere in the schedule is there a delineation of the work accruing to a Passenger Service Supervisor. We submit that the Organization has not established that work of the type here in question accrues to clerks, to the exclusion of all other employees.

There has been no violation of the schedule; the claim should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to May 1, 1958 there were two Passenger Service Supervisors at the Grand Central Terminal in New York City. These positions were originally established at the Grand Central Terminal on December 2, 1938 and on January 10, 1941. It was not until March 3, 1952 that the employees holding positions of Passenger Service Supervisors were represented by Petitioner. On that date Carrier confirmed "that the occupants of the positions of Passenger Service Supervisors at Grand Central Terminal, New York, Messrs. Barry and Connelly, and J. W. Ryan at Boston, be added to the Assistant Superintendent's roster at Grand Central and the Superintendent's roster at Boston, respectively, and that these positions will be otherwise subject to applicable provisions of the Clerks' Agreement." Effective May 1, 1958 Carrier

abolished the position of Passenger Service Supervisor held by Claimant scheduled to work from 5:00 P. M. to 1:00 A. M. The other position of Passenger Service Supervisor held by W. T. Barry and scheduled to work from 8:00 A. M. to 5:30 P. M. remained active.

Petitioner contends that Assistant Trainmaster, H. F. Hopkins, who is not covered by the Agreement, took over and performed all of the duties heretofore performed by the Claimant during the same scheduled hours. This, Petitioner argues, is in violation of Section (b) of Rule 1 of the Agreement which, in part, says:

"Positions named above in this Rule 1 belong to employees covered by this agreement and nothing herein shall be construed to permit the removal of such positions from the application of these rules by transfer to another craft except by agreement between the parties signatory hereto."

The record shows that prior to the establishment of Passenger Service Supervisor positions all train consists and related work was performed by Assistant Trainmasters. The positions of Passenger Service Supervisors were created to assist "operating officials in the supervision of passenger movements, handling and turning equipment and general observation and directing crews." They performed duties similar to those performed by Assistant Trainmasters and Trainmasters "but with a lesser degree of authority and responsibility."

In a letter dated November 24, 1958 addressed to Petitioner's General Chairman, Carrier's Vice President in charge of Labor Relations and Personnel, in part wrote:

"Investigation has developed that the majority of the work formerly performed by the Passenger Service Supervisor was in fact being performed concurrently by both the Trainmaster and Passenger Service Supervisor prior to the abolishment of the latter position."

Petitioner, in its Ex Parte Submission states:

"The duties of the Passenger Service Supervisor are similar to the duties of an Ass't Stationmaster at other points on this property."

In a statement dated October 21, 1958, H. F. Hopkins, who took over the work formerly performed by Claimant, in part, said:

"Since May 1, 1955, the undersigned as Assistant Trainmaster and Trainmaster at Grand Central Terminal, among other supervisory duties, has performed work similar to the second trick Passenger Service Supervisor. My hours of duty varied based on travel conditions and any unusual occurrences affecting train service."

Petitioner replied that there "has never been a Trainmaster assigned on the second trick at Grand Central Terminal prior to the date Carrier abolished the Claimant's position and gave all his work to Mr. H. F. Hopkins." No trainmaster was assigned to the Grand Central Terminal until May, 1955 and then Hopkins was not assigned to the second trick.

On the basis of the record, it is established that the Assistant Trainmaster and Trainmaster at the Grand Central Terminal since 1955, and earlier at

other terminals, performed the same duties as Passenger Service Supervisors. The mere fact that no Assistant Trainmaster was assigned to the second trick until on or about May 1, 1958 does not alter the situation. The work was performed concurrently by both positions at the Grand Central Terminal for a period of three years prior to the time Claimant's position was abolished.

The Scope Rule does not describe or define the work of the positions covered. In the absence of such coverage, it is necessary to ascertain whether the work is reserved traditionally and customarily to the positions covered by the Agreement. The burden of proof is upon the Claimant. The evidence in the record shows that such work was not traditionally and customarily performed exclusively by Passenger Service Supervisors.

The record also shows that most of the work formerly performed by Claimant was of supervisory nature also performed by Assistant Trainmasters and Trainmasters. Carrier has meticulously analyzed the work assignments contained in the joint check made on June 6, 1958. Nowhere in the record does Petitioner challenge this analysis.

On the basis of the record we find no merit to 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.