

Award No. 12772
Docket No. CL-12503

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4920) that:

(1) The Carrier violated and continues to violate the effective Clerks' Agreement when on or about March 1, 1958 it created a new position known as the Assistant Agent at Gary, Indiana and failed to bulletin and award the position in accordance with the provisions of the Agreement;

(2) The position of Assistant Agent be bulletined and awarded in accordance with the provisions of our agreement;

(3) The successful applicant to the position of Assistant Agent and the successful applicants to all resulting vacancies be compensated the difference between the amount they earned and that which they should have earned if our agreement had been properly applied, such compensation to be retroactive to March 1, 1958 and continuing up to the time this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On or about March 1, 1958 the Carrier established a new position of Assistant Agent at Gary, Indiana and filled it by appointment rather than by advertising for bids and awarding it in accordance with our rules.

Claim was filed on March 21, 1958 and was progressed up to and including the highest officer designated by the Carrier to handle such disputes.

This claim was discussed in numerous conferences and the time limit was mutually extended several times. A copy of the letter, dated July 25, 1960, in which the Carrier agreed to an extension of time up to and including March 31, 1961 is attached hereto and made a part hereof and is identified as Employees' Exhibit A.

In handling the instant claim with the Carrier, the Organization based its argument on the contention that the position in issue is filled by a subordinate official of the Carrier, and therefore, under definitions of the Interstate Commerce Commission, the employee filling the position should be subject to the provisions of the Railway Labor Act. The Organization then contended that inasmuch as it represents employees and subordinate officials of the craft and class of clerical, office, station and storehouse employees the position of Assistant Agent is covered by the scope rule of the Clerks' Agreement.

The Carrier submits that the Organization's argument is nothing but an uncorroborated self-serving conclusion. This is not the manner in which the Railway Labor Act provides for Organizations to obtain representation and control over classes and crafts of employees. It is obvious that if the Organization attains control over a position, it attains control over the person who fills it, and the Organization cannot do this merely by asserting that the position is a subordinate position.

The Interstate Commerce Commission recognizes that the duties and responsibilities of supervisory station agents vary widely. They recognize the fact that there are supervisory station agents at large and important stations whose duties are wholly supervisory, and who are of necessity vested with greater responsibilities, duties and authority than other supervisory station agents, and that they may be designated officials and excluded from the class of subordinate officials. The Carrier asserts that the position of Assistant Agent, Gary is in this category. The Gary Agency is located in a large city, population 160,000. It is an important, if not the most important, station on this Carrier as it services the most customers, and handles the largest volume of business. Two hundred (200) clerical employees are normally employed out of this Agency, which is far more than on any other Agency on this Carrier. When the Assistant Agent is on duty, he is top man. The duties of the Assistant Agent are wholly supervisory, and he has far greater responsibilities, duty, and authority than other supervisory station agents classified by the Interstate Commerce Commission as subordinate officials. The Assistant Agent, Gary, is and always has been (since as early as October 1, 1943) reported in I.C.C. job classification No. 78, which encompasses official supervisory station agents.

In view of the foregoing, the Carrier respectfully requests a denial award.

OPINION OF BOARD: The record reveals that the Carrier established the position of Assistant Agent, on or about March 1, 1958 at its Gary, Indiana station. This position had formerly been in existence from October 1, 1943 to April 16, 1946 and from January 8, 1952 to October 21, 1953. On February 28, 1958, the Carrier abolished its agency at Buffington, Indiana. The Agent at Buffington, who by written agreement with the Organization was recognized as being outside the craft or class of clerical, office, station and storehouse employees, retired. The position of Chief Clerk was abolished and the incumbent exercised his displacement rights at Gary, Indiana. The two remaining clerical positions were transferred to the Gary, Indiana Agency on April 7, 1958 and May 1, 1958. These three positions comprised the entire work force at Buffington and were within the scope of the Clerks' agreement. The Gary station maintains a work force of approximately 200 clerical employees, and operates 24 hours per day, seven days per week. The new assistant agent at Gary, in addition to his regular duties and responsibilities, had to supervise the transfer of work and accounts from Buffington to Gary. While so

doing, he performed some clerical work, which became a subject of dispute between the parties, finally being settled in favor of the Organization.

The Assistant Agent is normally on duty from 4:00 P. M. to 1:00 A. M. the next morning and has the same duties the station Agent had during the earlier daylight hours, except for the fact that the station agent is still primarily responsible for everything that is done even though he is not physically present. There is no contention made in this case that the duties performed by the Assistant Agent represent an absorption of work previously accomplished by clerks, nor is there any contention made that the agent performs routine clerical or office work as part of his job. The principal issue to be resolved is whether, as the organization maintains, the position of Assistant Agent falls within the scope of the Agreement or whether, as the Carrier maintains, this position is outside the scope of the agreement and as such is properly classified as an "official position".

Our attention is directed to the Order of the Interstate Commerce Commission of February 5, 1924 in Ex Parte 72 quoted below:

"The duties and responsibilities of supervisory station agents vary so widely that they cannot all be consistently designated subordinate officials. This class will be sub-divided as follows:

(a) Supervisory station agents who, in addition to their supervisory duties are required to perform work usually performed by telegraphers, telephone operators, ticket sellers, bookkeepers, towermen, levermen, or similar routine duties, are employees, and although they may have supervision over one or more other station employees, cannot be properly designated subordinate officials.

(b) Except those referred to in the next succeeding paragraph, supervisory station agents whose duties are wholly supervisory and who are not required to perform routine office work, as outlined in the preceding paragraph, are designated as subordinate officials.

(c) Supervisory station agents at large and important stations whose duties are wholly supervisory, and who are of necessity vested with greater responsibilities, duties and authority than the agents hereinbefore classed as subordinate officials, may be designated officials and excluded from class of subordinate officials."

The petitioner argues that the mere fact that the duties of the Assistant Agent are wholly supervisory, does not give the Carrier the right to designate the position as that of an official. We are inclined to agree with this reasoning. However, it appears to us that the distinction between a position of a "subordinate official" and "official" as defined in the above quoted ICC Ex Parte 72 decision is one of degree. Both positions are supervisory in nature. The "official" as that term is defined, is vested with greater authority duties and responsibilities and is assigned to a large and important station, whereas the "subordinate official" as that term is defined is assigned to smaller stations with lesser authority, duties and responsibilities.

This position which is the subject of the instant dispute was first established in 1943 and again in 1952 as previously mentioned in this opinion. It was classified during those periods as an official position and as such outside

the scope of the agreement. There is no question that Gary, Indiana is one of the largest and most important stations of the Carrier, since it services the most customers and handles the greatest volume of business. It is further to be noted that two hundred clerical employees are normally employed at this station which is far more than any other station on this carrier.

The Organization bases its position principally on Third Division Awards 383 and 2830, both of which are factually distinguishable from the instant case. The agents in 383, in addition to their supervisory functions, performed routine office work, a factor which is not present in this case. Award 2830 did not involve station agents but storekeeper positions, and by way of analogous reasoning, as applied to the opinion contained in ICC Ex Parte 72, the position in question, because of the peculiar factual situation, wherein the decision turned on the nature and extent of the purchasing power of the storekeeper, was deemed to be that of a "subordinate official", and as such within the scope of the collective bargaining agreement. The Assistant Agent in this case, despite the fact that he must report to the Station Agent, has a much wider range of authority and responsibility than the storekeeper and as such it is our judgement that he is properly classified not as a subordinate official but as an official and not an employee as that term is defined by the Railway Labor Act and by the Orders of the Interstate Commerce Commission.

We are further compelled to direct attention to the publication entitled "Rules governing the classification of Railroad Employees and Reports of their Service and Compensation Effective January 1, 1951". We find that the position of Assistant Supervising Station Agent is given the same, identical classification as Agent at major stations, a fact which strengthens our convictions that the position in question is an official one and not the position of an employee. In conclusion, an examination of the record convinces us that the petitioner has not presented to this board a sufficient amount of evidence to prove that the involved position was covered by the agreement. For this and the foregoing reasons, we must deny the claim.

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 17th day of July 1964.