

Award No. 13655
Docket No. CL-14291

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5399) that:

(a) The Carrier violated the Agreement when, effective April 6, 1962, it established a position in the Service Center, Sylvania Building, Huntington, West Virginia, to perform teletype work covered by the Agreement and filled the position with an employee not covered by the Agreement, and

(b) The Carrier shall now classify, rate, advertise and award the position in accordance with the terms of the Clerks' Agreement, and

(c) The Carrier shall pay to the employee awarded the position in disposition of this matter the difference in earnings, if any, beginning April 6, 1962, and continuing each subsequent date as a separate claim, and

(d) The Carrier shall adjust the earnings of each employee moved up as a result of the award of the position to reflect any loss in earnings. The claim is to continue on a day-to-day basis until disposed of by the parties.

EMPLOYEES' STATEMENT OF FACTS:

1. Early in 1961 the Carrier, through its wholly-owned subsidiary, The Chesapeake Realty Development Corporation, acquired from the General Services Administration a building known as the Sylvania Building, at Huntington, West Virginia. The plant had been erected by the navy during World War II and used by a firm for the manufacture of electronic tubes. The plant ceased operations in 1957 and bids were asked for it some months before its purchase by the C&O. Upon buying the property, the Carrier announced

CONCLUSIONS

The Carrier has shown:

1. That the telegraph office in the Operating Headquarters Building at Huntington, W. Va., is a bona fide telegraph office to which the various departments or offices send their telegrams and reports for inter-city transmission in the traditional or customary manner by telegraphers.
2. That such telegraph office is not a part of the clerical operation referred to as the Central Service Bureau, the evidence of the Employees confirming that the Carrier handled the telegraph office as a separate or independent matter throughout the clerical negotiations on the Central Service Bureau.
3. That the telegraph office in the Operating Headquarters Building comes within the exception contained in Clerks' Rule 1 (a), because such telegraph office handles exclusively messages and reports in an office equipped with telegraph facilities.
4. That, therefore, the Carrier has properly assigned employees under the Telegraphers' Agreement to such work, and the claim that such work should be removed from Telegraphers and assigned to Clerks should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to the date of claim, Carrier, through its subsidiary, purchased a building known as the Sylvania Building, at Huntington, West Virginia. Said building was later called Operating Headquarters Building. For some years the Carrier had maintained various office buildings, shops, and stations in Huntington, West Virginia, between which all messenger work in connection with carrying telegrams, inter-office communications and other documents between the various offices was performed by employees covered by the Agreement.

On May 3, 1961, Carrier served notice on the Organization, of its desire to establish, in the Sylvania Building, a Central Service Bureau. The Central Service Bureau would serve as the department which would handle all messenger work between the various offices in the Operating Headquarters Building and between such offices and the various other offices located in the Huntington area, such messenger work to be performed by employees coming under the agreement before us.

On March 8, 1962, a Memorandum Agreement was signed, to become effective on March 26, 1962, establishing the Central Service Bureau. Section 7 of the Memorandum Agreement makes reference to "Exhibit 1 attached to and made a part hereof." Exhibit 1 attached showed description of duties, time required for performance, forty-three positions in the ten offices or rosters, and two seniority districts. No telegrapher position was described therein.

On April 6, 1962, a position was established to operate teletype equipment at the Operating Headquarters Building.

The Organization contends that this position was not advertised to or filled by an employee covered by the Clerks' Agreement. Instead it was filled

by an employe of another class, having no rights under the Clerks' Agreement. In support of Claimant's position the Organization cites Rule 1 — Scope; Rule 3 — Seniority; Paragraphs 9, 12, 13, 14, 18, 19 of the Memorandum Agreement; and that the January 1, 1945 Clerks' Agreement was violated by filling the position herein.

Carrier contends the position for the newly established telegraph office was properly filled, as the Carrier arranged with the Organization involved, namely, the Telegraphers' Organization; that the telegraph office in dispute is not part of the Central Service Bureau; that the newly established office is a bona fide telegraph office by exclusively handling and engaged in the transmission of inter-city messages and reports; that the telegraph office clearly comes within the exception contained in Rule 1 (a).

Neither party on the property, relied upon or cited any awards of this Board as controlling, due to the unusual fact situation presented in the instant case.

The Board finds that in the interpretation of the Contract provisions relied upon by both Parties, specifically Rule 1 (a) of the Agreement, cited by both, that the establishment of the telegraph office, subsequent to the effective dates of the Memorandum and Clerks' Agreement, clearly comes within the exception contained in Rule 1 (a) — Scope:

"1 (a) These rules shall govern the hours of service and working conditions of all of the following employes:

Group 1 — Clerical Workers: . . . teletype (except teletypes used exclusively in the transmission of messages and reports and located in offices which are equipped with telegraph facilities), . . ."

Petitioner cites in his submission that employes from other offices housed within the Operating Headquarters Building had been observed bringing documents directly to the telegrapher to be sent by teletype; that some of these other offices included pony circuits operated by Clerks under the Agreement and was in violation thereof. If this issue had been raised on the property as to other Class or Crafts using the Operator, it would have had great probative value, however, prior awards have held, issues before the Board for the first time, may not be considered.

The Organization asserts that this telegraph office is a part of the Central Service Bureau by being placed physically within the space allotted and assigned to the Bureau, namely Room 120, and submits a floor plan furnished by the Carrier during negotiations, showing said space in Room 120 as being that of the Bureau, with the teletype machines placed therein.

We find that the floor plan in itself does not constitute sufficient evidence to establish the telegraph office as part of or being under, the control of the Bureau, as contemplated by the Parties. The Board must confine its interpretation to the Agreements. Rule 1 (a), as to the work and duties of the newly created position and not to its physical location, in order to determine if the position is within or without the exception of the Scope Rule. The Organization must show that the telegrapher position is not performing exclusively the work and duties in the transmission of messages, and that the work under dispute is reserved exclusively to Clerks. Award 12256 (Dolnick) reads:

"This Division is firmly committed to the principle that the party asserting violation of its right by the other must come forward with facts and evidence of probative value which are sufficient to establish support for the assertion."

Neither does the Board find that the Carrier violated or circumvented the exceptions contained in paragraphs 9, 12, 13, 14, 18, 19 of the Memorandum Agreement. The Exhibit 1 attached to the Memorandum Agreement, as well as the terms of this Agreement, clearly recite and provide for performance of all services for offices located in the Operating Headquarters Building; establishment of a Central Service Bureau outlining positions to be established and abolished, hours of service and working conditions; and such duties that would be performed under and in accordance with the Clerks' Agreement and the Memorandum. Therefore, it was mutually agreed and understood that all work of the craft or class of Clerical, Office, Station, and Store employees in the offices and departments were covered by this Agreement, as shown in this Agreement.

The Organization cites paragraph 12 of the Memorandum Agreement as the exception incorporated therein; of work or consolidation omitted in preparing Exhibit 1, such work should then be performed in accordance with the provisions of the General Clerical Agreement and the Memorandum Agreement. Paragraph 12 reads:

"12. It is further agreed that should it develop that any of the work heretofore performed in any of the offices or departments involved in this consolidation and transfer of work was omitted in preparing Exhibit 1 and such work is performed on and after the effective date of this Agreement, it shall be performed under and in accordance with the provisions of the General Clerical Agreement and this Memorandum Agreement and shall be assigned by agreement between the Management and the General Chairman."

Paragraph 12 is explicit in outlining the work "heretofore performed in any of the offices or departments involved in this consolidation and transfer of work omitted in preparing Exhibit 1." It's not disputed by Carrier that all work "heretofore performed in any of the offices or departments" is, being performed now by the Clerks in carrying messages, transmitting mail, and documents between Carrier's offices in accordance with the General Clerical Agreement and Exhibit 1, as contemplated by the Parties in the Memorandum. Further, the Organization contends that by not listing the teletype office in Exhibit 1, Carrier violated Paragraph 12 terms — "transfer of work was omitted in preparing Exhibit 1." We disagree. No "transfer of work" was omitted in Exhibit 1 as the position did not exist prior to the effective date of the Memorandum and was established subsequent thereto. This position or work never had been performed in practice or tradition, nor encompassed within the General Clerical Agreement prior to the consolidation at Huntington. Nor can Rule 1 (b) cited by the Organization be applicable in the instant case, as no position was abolished from within the scope of this agreement. Award 8381 reads in part:

"The work in question was not assigned to Clerks by specific reference in the agreement; it is not Clerk's work to the exclusion of other classes or crafts, and no position was abolished hereby. . . ."

No evidence has been presented to show that the two teletypes; in the instant dispute, are being used now in the performance of clerical work or

in lieu thereof, nor that the newly established position is performing work which previously had been reserved exclusively to the clerks.

The Organization alleges that the Carrier established the new position, without compliance with the Clerks' Agreement, as the office of the Central Service Bureau was not in existence on January 1, 1945; hence, it could not have been equipped with telegraph facilities on that date. We note that since this Agreement, other teletype facilities have been established on the Carrier's line being separate and distinct from the Clerks' Agreement. We do not agree, that it was contemplated by the Parties, to make mandatory, the placement of Clerks, in newly established telegraph offices, subsequent to this Agreement.

The claim will be denied, as the Petitioner has failed to sustain the burden of proving that the Carrier violated the Agreements as alleged.

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 15th day of June 1965.