

Award No. 16865
Docket No. CL-17684

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6461) that:

(a) The Southern Pacific Company violated the current agreement between the parties when on May 5, 1967, it refused to allow Mr. R. O. Hawkins to return to his vested position, Chief Clerk No. 2, Glendale, California, following absence due to illness; and,

(b) The Southern Pacific Company shall now be required to allow Mr. R. O. Hawkins eight (8) hours' compensation at the pro rata rate of Chief Clerk Position No. 2 May 9, 1967 and each work day thereafter to July 25, 1967, the day he was permitted to return thereto, less vacation allowance for the period May 16 through May 31, 1967.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

Mr. R. O. Hawkins, hereinafter referred to as the Claimant, began service with Carrier on June 24, 1936. Approximately twenty (20) years of this service up to September 9, 1966, on which date he had a heart attack, was performed on Chief Clerk Position No. 2. Following a period of convalescence he entered the hospital on March 7, 1967 for evaluation of his condition. Dr. Ferguson's report to Chief Surgeon Strange follows:

"March 10, 1967

Dr. Vance M. Strange:

Re: Ralph Hawkins, age 53 yrs., occupation Chief Clerk, residing at 3155 Holly Dale Drive, Los Angeles, California. Total service 30 years.

On June 13, 1967 Agent Hytner was requested to outline the duties performed on Chief Clerk Position No. 2 and his statement is attached as Carrier's Exhibit I.

On June 19, 1967 (copy attached as Carrier's Exhibit J), petitioner's general chairman submitted additional information which is attached and referred to as Carrier's Exhibit J-1 and J-2.

Under date of June 22, 1967 (copy attached as Carrier's Exhibit K), petitioner's division chairman submitted to Carrier's superintendent claim that claimant be compensated starting May 9, 1967 until restored to Position No. 2, Chief Clerk, Glendale, less vacation paid May 16 through May 31, 1967. Letter was acknowledged July 11, 1967 and case listed for conference.

On July 24, 1967 Carrier's assistant general manager instructed that duties pertaining to handling of baggage, mail, remains and transfer of passengers at Glendale be removed from Position No. 2, Chief Clerk, and assigned to other employees at that station and that claimant be permitted to return to work within restrictions on his services, working no more than one shift each day. Claimant returned to restricted work July 25, 1967.

Conference was held August 1, 1967 between Carrier's superintendent and petitioner's division chairman, claim was denied and confirmed by letter August 2, 1967 (copy attached as Carrier's Exhibit L).

Under date of August 22, 1967 (copy attached as Carrier's Exhibit M), petitioner's general chairman appealed claim to Carrier's assistant general manager. Claim was acknowledged on August 28, 1967 and case listed for conference. On October 13, 1967 mutual agreement was made between the parties to extend time limits for decision to be rendered. Conference was held on February 28, 1968, claim was denied and confirmed by letter March 6, 1968 (copy attached as Carrier's Exhibit N).

On April 5, 1968 case was listed for adjudication before the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case, Mr. R. O. Hawkins, was the Chief Clerk for the Carrier at Glendale, California.

He suffered a heart attack on September 9, 1966. After a period of convalescence, he received a statement from his physician on March 10, 1967 stating that he could return to duty with the following restrictions:

- "1. Not to lift over 25 pounds.
2. Not to work excessive hours."

The Carrier denied Claimant the right to return to the Chief Clerk position on the basis that the job required the handling of baggage and remains from time to time, and that Mr. Hawkins could not, therefore, perform all of the duties of Chief Clerk with the medical restrictions that had been placed on him. On the other hand, the Claimant contends that the handling of baggage and remains did not constitute a part of the duties of Chief Clerk position.

Therefore, the issue in this case is whether the Chief Clerk position at Glendale, California had duties that the Claimant could not perform because of his physical condition — namely, the handling of baggage and remains.

The evidence regarding this issue is in almost hopeless conflict. Much of it that was submitted by both parties was of the self-serving, inconsistent, or "backfilling" variety. Nevertheless, the Board is convinced that the duties of handling baggage and remains were a part of the Chief Clerk position, particularly because of the following evidence.

On February 15, 1967, Mr. Turman, who had replaced Mr. Hawkins as Chief Clerk after Mr. Hawkins suffered his heart attack, wrote a letter to Mr. Hytner, Agent for the Carrier at Glendale, which letter stated:

"Glendale, California
February 15th, 1967

Mr. A. Hytner, Agent
Southern Pacific Company
Glendale, California

Because of my physical condition I will not be able to handle remains or heavy mail or baggage at the Glendale Station.

/s/ Ted J. Turman
Clerk"

It is immediately apparent that had not the duties of the Chief Clerk position, the one Mr. Turman was then occupying, included the handling of baggage and remains, there would have been no purpose whatsoever in Mr. Turman's having written the letter.

Furthermore, Mr. Hawkins by his signature acknowledged receipt of the following letter to him from Mr. J. H. Long, Superintendent for the Carrier at Los Angeles, California. (This letter was written immediately following a discussion between Mr. Hawkins and Mr. Long in Mr. Long's office and was signed by both of them at that time.)

"Los Angeles, California
May 16, 1967

Mr. Ralph O. Hawkins
% Superintendent's Office
Los Angeles, California

This will confirm conversation in my office this morning concerning your release for duty to be effective May 9, 1967.

Your release to return to duty had the following restrictions imposed:

- (1) That you were not to lift over 25 pounds;
- (2) That you were not to work excessive hours.

In view of the foregoing restrictions, you yourself agreed that you could not return to Chief Clerk Position No. 2 at Glendale, because of the restricted duties assigned to that Position. However, you are now aware that you have a protected rate and that there are numerous other positions for which you are qualified and can displace on to protect your rate.

Kindly acknowledge receipt of the attached copy of this letter and return for my file.

/s/ J. H. Long

cc: Mr. J. M. Harwell
Dr. M. T. Steele

/s/ Ralph O. Hawkins
RECEIPT ACKNOWLEDGED
May 16, 1967"

This letter on its face establishes that there were duties in the Chief Clerk position which Mr. Hawkins could not perform with the medical restrictions that had been imposed upon him.

While Mr. Hawkins denies that he knew the contents of the letter before he signed it and also denies that he agreed with Mr. Long that the medical restrictions would interfere with his ability to perform the Chief Clerk duties, these denials are inherently improbable, particularly since he later that day asked that the letter be torn up.

The Board is equally convinced by the evidence in the Record that Mr. Turman, as Acting Chief Clerk, did not handle baggage and remains from February 15, 1967 until July 25, 1967, the latter date being when Mr. Hawkins was permitted to return to the Chief Clerk position based upon the Carrier's assertion that the duties of the Chief Clerk position had been "rearranged" to obviate the necessity of handling baggage and remains. Mr. Turman's letter dated February 15, 1967, quoted above, clearly indicates that he did not handle baggage and remains from that date forward. Furthermore, it is significant to the Board that the Carrier chose a day that Mr. Will, the Relief Clerk at Glendale who performed the duties of Chief Clerk the two days a week that Mr. Turman was off duty, was relieving as Chief Clerk to observe the activities of that position to establish that the handling of baggage was included in the duties of the position.

The question thus becomes whether the Carrier violated the Agreement in not permitting Mr. Hawkins to return to work to perform the same duties that Mr. Turman, the Acting Chief Clerk, was then performing, notwithstanding the fact that Mr. Turman was not performing all of the duties of the position. The Board is persuaded that there was probably more in not letting Mr. Hawkins return to work on May 9, 1967, than meets the eye, and the Carrier may well have been "unfair" in a sense to Mr. Hawkins, since Mr. Hawkins and Mr. Turman stood on a par in their inability to perform the handling of baggage and remains duties of the position.

However, simply because the Carrier did not, as it could have done, remove Turman from the Chief Clerk position for inability to perform all of

the duties of the position, the Carrier was not required to give the same consideration to Mr. Hawkins as a matter of contractual obligation. The Carrier has the right to require an employe to be able to perform all of the duties of his position. (See Awards Nos. 14173 (Wolfe), and 4892 (Carter).) That right was not waived by giving a "break" to Mr. Turman. Therefore, the record must find, although reluctantly, that Mr. Hawkins was not entitled as a matter of right to be returned to the Chief Clerk position.

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 Employes involved in this dispute are respectively Carrier and Employes 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 23rd day of January 1969.