

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

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

DISPUTE.—"Claim of the employees that the timekeeping, accounting, and all other related work formerly done under the supervision of each Division Superintendent and Master Mechanic covered by the Schedule of Rules and Working Conditions effective June 23, 1922, revised September 1, 1927, remains under such Schedule after the work was consolidated as between the various operating divisions and transferred to newly created offices hereinafter set forth in Employees' Statement of Fact. Also claim of the employees that the Schedule of Rules and Working Conditions now be made effective to such newly created and consolidated offices, and that claims of employees arising out of the violation of their rights shall be handled and adjusted under the rules of such Schedule of Rules and Working Conditions."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Wm. H. Spencer, was called in as Referee to sit with the Division as a member thereof.

There is in evidence an agreement between the parties, bearing effective date of June 23, 1922, revised September 1, 1927.

FURTHER FINDINGS.—Prior to October 1930 certain transportation and maintenance of way department accounting and timekeeping work was performed in the office and under the jurisdiction of the superintendents on each division. These timekeeping and accounting positions, except the positions of chief accountant and chief timekeeper, were covered by the Clerks' Agreement. Effective with the accounts for the month of October 1930 this accounting and timekeeping work was discontinued in the offices under the jurisdiction of superintendents and assigned to the offices of the general superintendents. All of this work, except the work on the Chicago Terminal Division, was centralized at these four points on the railroad:

Northern Lines, Champaign, Illinois.
Western Lines, Waterloo, Iowa.
Southern Lines, Paducah, Kentucky.
Y. & M. V. R. R., Memphis, Tennessee.

On April 1, 1931, these four accounting and timekeeping organizations, as well as the Chicago Terminal Division accounting and timekeeping organization, were transferred from the jurisdiction of the general superintendents to the jurisdiction of the Auditor of Disbursements.

In April 1931 the office at Waterloo, Iowa, was abolished and the accounting and timekeeping work which had previously been performed at Waterloo was transferred to the office at Champaign, Illinois.

In November 1931 the office at Paducah, Kentucky, was abolished and the accounting and timekeeping work which had been previously performed at Paducah was transferred to the office at Memphis, Tennessee.

In April 1932 the office at Champaign, Illinois, was abolished and the accounting and timekeeping work which had been previously performed at

Champaign was transferred to the office at Chicago and consolidated with the Chicago Terminal accounting and timekeeping organization.

Prior to April 1931 certain maintenance of equipment department accounting and timekeeping work had been performed in the offices and under the jurisdiction of the master mechanics. These accounting and timekeeping positions, except the positions of chief accountant and chief timekeeper, were covered by the Clerks' Agreement. Effective with the accounts for the month of April 1931, this accounting and timekeeping work was discontinued in the offices of the master mechanics and assigned to the offices of the General Superintendent of Motive Power. All of the accounting and timekeeping work for shops south of the river, except that at Paducah, Kentucky, was consolidated at Memphis, Tennessee, all being placed under the jurisdiction and supervision of the General Superintendent of Motive Power.

In November 1931 the maintenance of equipment accounting and timekeeping forces were transferred from the jurisdiction of the General Superintendent of Motive Power to the jurisdiction of the Auditor of Disbursements and consolidated with the transportation and maintenance of way forces at Chicago and Memphis, respectively.

In April 1932, when the transportation and maintenance of way accounting and timekeeping was transferred from Champaign, Illinois, and that work consolidated with the transportation, maintenance of way and mechanical accounting and timekeeping work at Chicago, Illinois, the office of the Auditor of Capital Expenditures was abolished and certain valuation work was transferred from that office to the jurisdiction of the Auditor of Disbursements.

Prior to December 1931, certain store department accounting work was performed in the offices and under the jurisdiction of the division storekeepers, and the positions of accountants in these offices were excepted positions under Rule 1 "Exceptions." Paragraph (b) of the clerks' Schedule agreement. Effective with the accounts for the month of December 1931 this accounting work was abolished in the division storekeepers' office and centralized in the offices of the General Storekeeper at Burnside, Illinois, and Memphis, Tennessee, under the supervision and jurisdiction of the General Storekeeper. All positions in the office of the General Storekeeper are specifically "excepted" under paragraph of Rule 1 (b-1) of the Clerks' Agreement. In September 1932 this accounting work was transferred to the Auditor of Disbursements and consolidated in his accounting bureaus at Chicago, Illinois, and Memphis, Tennessee, respectively.

The foregoing changes culminated in the ultimate centralization of the work as of September 1932 in two accounting bureaus in Chicago, Illinois, and Memphis, Tennessee, under jurisdiction of the Auditor of Disbursements.

RESPECTIVE POSITIONS OF THE PARTIES.—The petitioner contended that the carrier, in making the changes above described, failed and refused to be governed by the Rules of the Agreement between the parties, that it established monthly rates of pay for the positions in the consolidated offices, that it assigned employees to the positions without regard to their seniority rights, that it wrongfully removed scheduled positions previously covered by the Clerks' Agreement from under its operation. In support of its position, the petitioner relied primarily upon Rule 64 which provides:

"This agreement shall be effective as of September 1, 1927, and shall continue in effect until it is changed as provided herein or under the provisions of the Transportation Act, 1920.

"Should either of the parties to this agreement desire to revise or modify these rules, 30 days' written advance notice, containing the proposed changes, shall be given and conferences shall be held immediately on the expiration of said notice unless another date is mutually agreed upon."

At the oral hearing held before the Division on August 19 and 20, 1935, the petitioner cited and relied upon Rule 61 of the Agreement between the parties which provides:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

The carrier contended that in the centralization of all of this type of accounting in the office of the Auditor of Disbursements, it acted strictly within

the rules of the Agreement between the parties and in the interest of economical and efficient operation. In support of this position, the carrier relied upon Rule 1 (b-1) which, in abbreviated form, follows:

"This agreement shall not apply to any positions in the following offices: ----- Operating Department above the rank of Division Superintendents, ----- General Storekeeper ----- Auditor of Disbursements -----; or to similar offices created in the future."

CONCLUSIONS OF THE DIVISION.—Upon the whole record and all the evidence, the Third Division arrives at these conclusions:

(1) This Division has jurisdiction over the present dispute. Its decision in *American Train Dispatchers Association vs. New York Central Railroad Company*, Award No. 53 is controlling in the circumstances of the present case.

(2) The positions in controversy did not become *excepted positions* within the meaning of the agreement between the parties merely because they were placed under the jurisdiction of the Auditor of Disbursements.

The carrier based its contention that the positions in controversy are *excepted positions*, upon the language of Rule 1 (b-1):

"This agreement shall not apply to any position in the following offices:
Operating Department above the rank of Division Superintendent,
General Storekeeper, Auditor of Disbursements ; or
to similar offices created in the future."

It is observed that the provisions here recited do not purport to define an *office*. The term must therefore be construed. It may be construed narrowly to include merely the private office of a given officer; or it may be construed broadly to include all employees, wherever located, placed under the jurisdiction of a given officer. Neither interpretation, in the opinion of the Referee, is permissible. If the former definition is adopted, the purpose of the rule is defeated; if the latter is adopted, the carrier can remove all employees from the operation of the agreement by placing them "in the office of the president", as, indeed, they are in a jurisdictional sense.

In this connection, it is to be remembered that the Railway Labor Act makes no provision for the omission of any part of a craft or class from the operation of a collective agreement which a majority of such craft or class has negotiated with the carrier. These *excepted positions* have been established by agreement between the parties. In view of this fact, the concept of an *excepted office* should be extended only in terms of the reasons which led to its original establishment.

Historically, the reason for omitting positions in the offices of certain officials from the operation of a collective agreement is the assumption that the occupants of such positions bear a confidential relationship to their immediate superiors or to the type of information with which they habitually work.

In the present dispute, it was not contended by the carrier that there was any confidential relationship between the occupants of the positions involved and the Auditor of Disbursements. As a matter of fact, the office of the Auditor of Disbursements is located at 12th Street, Chicago, whereas one of the two accounting bureaus is located at 63rd Street, Chicago, and the other is located in Memphis, Tenn.

The carrier introduced ample evidence to support the conclusion that the accounting work being performed in the two bureaus is important, that certain phases of the work is highly important, and that for the performance of certain of the work skilled accountants are required. It did not, however, adduce any evidence to support the conclusion that the accounting data dealt with in the bureaus are so confidential that they cannot be entrusted to employees covered by the Clerks' Agreement.

Neither can the carrier justify its position in the present controversy by resort to the provision in Rule 1 that the agreement shall not apply "to similar offices created in the future." Substantially the same considerations apply in the interpretation of this provision as apply in the interpretation of the phrase, *the office of the Auditor of Disbursements*.

(3) In bringing together the accounting work in the two bureaus under the jurisdiction of the Auditor of Disbursements, the carrier violated Rules 1, 4, 19, 20, 21, and 64 of the agreement between the parties.

In conclusion, the Referee cannot refrain from pointing out that this controversy, as it has developed, is essentially a dispute concerning representation.

The issue with respect to excepted positions did not arise at the outset. Much of the evidence presented by the carrier was designed to indicate that the employees doing the work in the two accounting bureaus are a class of employees, separate and distinct from clerks. The record—quite erroneously in the opinion of the Referee—contained signed statements by certain employees in the bureaus, protesting against representation by the Brotherhood of Clerks. The National Railroad Adjustment Board, however, has no jurisdiction over such issues. They are properly referable to the National Mediation Board.

AWARD

The claim is sustained.
By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 18th day of February 1936.