

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

SOUTHEASTERN EXPRESS COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood.

(1) That the position nominally titled 'Commercial Agent' at Charlotte, N. C., is subject to the scope and operation of the current agreement between the parties to this dispute, and

(2) That said position shall be classified, rated, bulletined and assigned in accordance with the rules of said agreement."

EMPLOYES' STATEMENT OF FACTS: "(1) The Carrier created a new position at Charlotte, N. C. on the payrolls of and under the supervision of General Agent, J. M. Small.

"(2) The Carrier affixed a payroll or nominal title of 'Commercial Agent' to said position and filled same by appointment without regard to the rules of the current agreement hereinafter referred to and quoted.

"(3) After the employees and their representatives had an opportunity to observe the duties assigned to and required of the appointed incumbent of said position, they noted and determined that such duties were subject to the scope and operations of their agreement.

"Such duties were as follows:

Solicitation of business;
Investigating complaints of shippers;
Inspecting Bad Order shipments;
Quoting tariffs;
Giving advice to shippers as to packing and routing, and
Rendition of reports incident thereto.

"(4) The proper Committee and Officers of the Brotherhood thereupon requested General Agent Small to bulletin and assign said position in accordance with the rules of their agreement. The carrier declined and has continued to decline to classify, rate, bulletin and assign said position in accordance with the agreement between the Carrier and the Brotherhood."

POSITION OF THE EMPLOYES: "Rule 1 of the current agreement establishes its scope and specifically provides that it covers all employees of this Carrier excepting those specifically stipulated in Rule 2 of the agreement.

"Rule 2 of the agreement reads as follows:

'Employee Excepted—Rule 2: These rules shall not apply to agents or their superiors in official rank, or to Depot Agents, General Fore-

the Commercial Agent position at Charlotte, N. C. In negotiating the agreement, employe representatives had full knowledge of the existence of these positions and knew that they had never been subjected to bulletin. Rule 92 of the existing agreement reads:

'Rule 92—Agreements or practices, except as changed by this Agreement remain in effect.'

"Carrier submits that this Rule 92 saves to it the practice of continuing to fill Commercial Agent positions without bulletin, since it had been doing so prior to the negotiation of the existing agreement and has continued to do so for more than ten years since its negotiation with full knowledge and acquiescence by the employes."

OPINION OF BOARD: The record is not complete as to the duties performed by the incumbent of the position of Commercial Agent at Charlotte, N. C., while it existed. Bulletins of positions of Commercial Agent at certain other points, advertising the same for bids, submitted by the employes as exhibits, indicate that positions of that title have been regarded by the carrier as coming within the scope of the agreement where routine clerical or other classified work formed a substantial part of the duties; where such work is only incidental, the agreement has been deemed not to apply. Under this application it appears from the record that a number of Commercial Agents' positions exist without the scope of the agreement and a number exist within its scope, with respect to which there is no dispute and from which it appears that the parties, by their actions heretofore, have established principles that should be a sufficient guide for determination of the classification of positions of this character that may be created hereafter.

The record is indefinite; the position giving rise to this claim having been abolished before the case reached the Board, the question as to it is therefore moot.

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 employe involved in this dispute are respectively carrier and employe 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 evidence discloses the question in this case is moot at this time.

AWARD

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 27th day of May, 1938.