

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: "(1) Claim of the System Committee of the Brotherhood that the Carrier violated the June 1, 1927, wage agreement when on January 1, 1933, it arbitrarily and without notice to or conference with the proper Officers of the Brotherhood, reduced the rate of position of Chief Clerk, Passenger Accounting Sub-Department of the Office of Auditor of Revenues from \$307.00 to \$276.25 per month.

"(2) Claim of the System Committee of the Brotherhood that the Carrier violated the rules between the two parties to this dispute when on December 1, 1937, it failed and refused to bulletin vacancy occurring on position of Chief Clerk, Passenger Accounting Sub-Department of the Office of Auditor Revenues resulting from the assignment of Milton R. Wortley, regular incumbent of said position, to an excepted position in another seniority district but did fill said position by the arbitrary appointment of Robt. J. Armour thereto, who held no seniority rights whatever on the Passenger Accounting seniority roster.

"(3) Claim of the System Committee of the Brotherhood that the Carrier shall now be required to (a) re-establish the established and agreed upon rate of \$307.00 per month on said position subject only to the provisions of proper and legal wage agreements negotiated and made effective subsequent to the June 1, 1927 wage agreement; (b) bulletin and assign the vacancy occurring on said position December 1, 1937, and (c) reimburse all employees for monetary losses suffered as a result of all agreement violations hereinbefore stipulated."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties: "From July 1, 1921 (effective date of current Schedule) the position in charge of passenger accounts in the Accounting Department, Detroit, Michigan, has been designated and rated as follows:

7/ 1/21 to 6/30/22	Sub Chief Clerk-Psgr. Accounts	\$8.0125 per day
7/ 1/22 to 3/31/23	" " " "	7.7725 " "
4/ 1/23 to 10/15/23	" " " "	8.24 " "
10/16/23 to 12/31/24	" " " "	8.40 " "
1/ 1/25 to 5/31/27	Chief Clerk-Psgr. Accounts	260.00 " Mo.
5/1/27 to 7/31/31	" " " "	\$307.00 per Mo.
8/1/31 to 1/31/32	" " " "	307.00 " "
2/1/32 to 12/31/32	" " " "	\$307.00 per mo. less 10% deduction.
1/1/33 to 1/31/37	" " " "	276.25 " " " 5% "
2/1/37 to 3/31/37	" " " "	276.25 " " " 4½% "

"In our opinion no basis exists in the Schedule, or in equity for any employe other than Robert J. Armour, to be reimbursed for any monetary losses, and not even Mr. Armour should benefit except in the event of a finding that the position of Chief Clerk-Passenger Accounts was within the scope of the Schedule, and then only from December 13, 1937, as heretofore pointed out.

"On the basis of the evidence however, we feel that all the claims should be denied."

There is in evidence an agreement between the parties bearing effective date of July 1, 1921, from which the foregoing rules are quoted. There is also in evidence copy of wage agreement bearing effective date of June 1, 1927.

OPINION OF BOARD: There are two agreements involved in this dispute—one, the rules agreement, effective July 1, 1921, the other the wage agreement, effective June 1, 1927. We shall first deal with the claims in so far as they relate to the former.

The parties agree that the position of Chief Passenger Clerk was covered by the rules agreement of July 1, 1921. Effective April 1, 1923, the title of the position was changed to Sub-Chief Clerk-Passenger Accounts, and beginning Nov. 2, 1923, the occupant of the position reported to and received instructions from the Auditor of Revenues instead of the Chief Clerk to the Auditor of Revenues from whom he formerly received them. Effective Jan. 1, 1925, the title of the position was again changed to Chief Clerk-Passenger Accounts. With this latter change in title and an increase in pay made effective at the same time, the position became of equal status with that of Chief Clerk—Overcharge Claims—the occupants of both positions being in the office of and reporting to the Auditor of Revenues.

The position of Chief Clerk-Overcharge Claims was included among the list of excepted positions under the scope rule of the Agreement and, relying upon certain decisions of the United States Railroad Labor Board and Award No. 484 of this Division, Carrier contends the position in question became an excepted position with the change in title and the elevation of the position to a status equal to other similar excepted positions.

We are unable to agree with this contention of Carrier. Unlike most of the positions considered in the decisions and award referred to, the position in question, under another title, was in existence when the agreement was executed and included within the scope rule of the agreement. The record shows that the duties of the position did not change with the changes in title. It is a fact well-known to everyone that in agreements of this character some positions are covered by the agreements while others of equal and sometimes even lesser status are exempted. Our attention has been directed to no decision holding that a change in the title of a position operates to exempt the position from the scope rule of an agreement and it is the opinion of the Board that the change in title of the position in question did not remove it from the agreement.

What we have said above disposes of Claim (1) and Claim (2) except as to what is said hereafter with reference to the alleged arbitrary appointment of Robt. J. Armour on Dec. 1, 1937, to the position in question. We shall next deal with that part of Claim (3) (c) that has to do with the claim for compensation for the incumbent of the position in question from Jan. 1, 1933, to Nov. 30, 1937, inclusive.

The current wage agreement, effective June 1, 1927, fixed the rate of pay for the position in question at \$307.00 per month. This rate of pay was paid until Feb. 1, 1932 when the Chicago National Wage Deduction Agreement became effective. The Chicago Agreement and extensions thereof provided for a 10% wage deduction to June 30, 1934. The Washington Wage Agreement of 1934 provided for the gradual restoration of the 10% wage deduction to April 1, 1935, when the wages specified in the wage

agreement of June 1, 1927, were completely restored. These wage rates continued in effect thereafter until the Washington Mediation Agreement, which provided for an increase in the basic rates of pay of 5¢ per hour, became effective Aug. 1, 1937.

Carrier applied the 10% deduction specified in the Chicago wage deduction Agreement to the position in question. However, on Jan. 1, 1933, Carrier established a basic rate of pay of \$276.25 per month for the position and thereafter failed to conform to the rates of pay specified in the various agreements mentioned above. The action of Carrier in this matter conformed with reductions made in the rates of pay of excepted positions and the reduction was made in this case upon the assumption the position was not covered by the rules agreement.

Under date of Feb. 13, 1933, the Brotherhood protested the reduction in pay of this and another position. After conference by the parties, it was agreed that the matters covered by the protest would be held in abeyance until Carrier again heard from the General Chairman of the Brotherhood. There, the matter rested until this claim was filed.

On Dec. 1, 1937, Carrier promoted the occupant of the position in question (who had held it from Dec. 1, 1919) to another position and filled the position without bulletining same as required by Rule 10 of the rules agreement. This action of carrier was protested by the Brotherhood on Jan. 12, 1938, but in the letter of protest no mention was made of the original protest concerning the rate of pay of the position and, as stated above, none was made until this claim was filed.

Rule 31 of the rules agreement provides: "The settlement of a dispute shall not, under any circumstances, involve retroactive pay beyond the period of thirty (30) days prior to the date that such dispute was submitted in writing by the employee."

Rule 33 of the same agreement provides: "The time limit provided in this article may be extended by mutual agreement." This rule is not technically applicable in this case because the General Chairman's letter of Feb. 13, 1933, fully complied with the requirements of Rule 31. However, giving to it a broader meaning than is clearly intended, it would be insufficient to excuse the long delay of the Brotherhood in bringing this dispute to final determination (See Award No. 863). Even conceding that there was no forum to which the dispute could be taken when it originated in 1933, the Amended Railway Labor Act became effective June 21, 1934, and that Act specifically authorized disputes then pending and unadjusted to be brought to this Board. The long delay in bringing that part of Claim (3) (c) here dealt with to this Division cannot be excused upon any ground. It is barred by Rule 31 of the prevailing agreement.

The Brotherhood contends that Carrier should now be required to (a) reestablish the agreed upon wage rate for the position, (b) bulletin and assign the vacancy as of Dec. 1, 1937, and (c) reimburse all employees for monetary losses suffered as the result of all agreement violations.

We have already held that the position was covered by the agreement and that the action of the Carrier in reducing the rate of pay was a violation thereof but that the cut-off rule (Rule 31) barred the recovery of compensation from Jan. 1, 1933, to Dec. 1, 1937. We have also held that, when the Carrier failed to bulletin the position on Dec. 1, 1937, when it transferred the regular incumbent thereof to another position, it likewise violated Rule 10 of the rules agreement.

Carrier abolished the position in question effective July 1, 1938, and it no longer exists. No claim is made that the position was improperly abolished and the Brotherhood does not seek to have it permanently reestablished. It, therefore, appears to the Board to be a useless and unnecessary requirement to now direct that the position be bulletined effective as of Dec. 1, 1937, as the sole purpose of such requirement would be to enable the parties to

determine the employees entitled to compensation as the result of Carrier's improper action in filling said position on Dec. 1, 1937, without bulletining same as required by the rules agreement.

Carrier contends that it is not liable to any one for its failure to bulletin the position as required by the rules agreement. It bases this contention upon two grounds: (1) that no claim was filed by or in the name of any employee prior to Aug. 3, 1938; and (2) that Rule 49 is a cut-off rule for such claims as the one here presented.

We are unable to agree with either of these contentions. The letter of protest of Jan. 12, 1938, from the General Chairman of the Brotherhood to Carrier is sufficient to cover compensation to all employees injured by the improper action of Carrier as claimed in this letter. It adequately met the requirements of Rule 31 and protected the rights of all parties affected. Rule 49 provides: "Except as provided in these rules, no compensation will be allowed for work not performed." The exception noted at the very beginning of this rule unquestionably covers and is applicable to claims of the character here presented.

The record does not satisfactorily show which of the employees are entitled to compensation by reason of the failure of the Carrier to bulletin the position in question on Dec. 1, 1937. While the record does not definitely show the facts, the Brotherhood contends and Carrier does not deny that Robt. J. Armour held no seniority rights on the position and if this is true, he, of course, is not entitled to compensation. However, he worked the position in question during the entire period involved and, if on further examination, it should develop that he did possess the necessary seniority rights, he should receive the compensation. Otherwise the employees entitled thereto should receive the compensation hereby awarded.

The claim for compensation for monetary losses suffered by any employee on and after Dec. 1, 1937, by reason of the improper action of Carrier in not bulletining the position will be referred to the parties for adjustment on the property.

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 Carrier violated the rules agreement and wage agreement to the extent stated in the Opinion and case should be referred to the parties for adjustment on the property as indicated by the Opinion.

AWARD

Claims (1), (2) and (3) sustained to the extent stated and case is referred to the parties for adjustment on the property in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of June, 1939.