

Award No. 1190
Docket No. CL-1322

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

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

**CHICAGO GREAT WESTERN RAILROAD COMPANY
INCLUDING SOUTH ST. PAUL TERMINAL
(Patrick H. Joyce and Luther M. Walter, Trustees)**

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

"The incumbents of the positions of stenographer and of clerk in the Purchasing Agent's Office, Chicago, Illinois, be compensated at least the prevailing and applicable minimum clerical rate of pay of \$4.4714 per day since February 1, 1940 and that such positions be so rated instead of \$102.00 and \$87.00 per month that is now being applied."

EMPLOYEES' STATEMENT OF FACTS: "Upon recent request of the General Chairman of the Brotherhood the Management agreed to compile and furnish statements of the rates of pay of all positions under the Clerks' Agreement. These statements of rates of pay disclosed such information causing several disputes and claims in connection with the rates of pay applicable to existing classified positions, that included the two positions in question of stenographer and of clerk in the Purchasing Agent's Office with claim being filed that they be rated not less than the established minimum clerical rate of \$4.4714 per day and that the incumbents be so compensated, effective February 1, 1940.

"The assigned duties of the stenographer's position consist of taking shorthand, transcribing, typing and clerical work during the daily eight hour assignment. The duties of clerk assigned and performed consist of opening mail, stamping and sorting invoices, filing, checking prices on invoices, typing and other clerical work during the daily eight hour assignment.

"The prevailing and applicable minimum clerical rate is \$4.4714 per day established through general wage negotiations."

CARRIER'S STATEMENT OF FACTS: "During the period from February 1, 1922, to August 15, 1939, an agreement was in effect between the Carrier and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. During this period the clerical employees in the Purchasing Department were not covered by the Clerks' Agreement and the positions were all considered excepted positions and therefore were not governed by the agreement with the Clerks' Organization.

Personal office forces will vary according to the organization of the railroad, departments and offices involved; therefore, the positions constituting personal office forces cannot be herein designated for all departments and offices. They include positions of a direct and confidential nature and it is the intent that the duties and responsibilities shall govern. The appointing officer shall be the judge, subject to appeal as provided in Article IV in the event of questions arising as to the justification for the classification.'

"These two positions of stenographer and clerk in the Purchasing Agent's office could not be construed as 'Excepted' under this rule as they are not of a direct and confidential nature, as that term ordinarily applies to such positions as chief clerk or stenographer to one of the officials named in exceptions of Rule 1, such positions handling peculiarly confidential matters in connection with the positions of the officials by whom they are employed."

POSITION OF CARRIER: "Prior to August 15, 1939, the positions involved in this dispute had always been excepted from the application of the Clerks' Agreement and their rates of pay were fixed by the carrier. To avoid any controversy arising after the effective date of the new agreement of August 15, 1939, with regard to the rates of pay of employees who were holding positions which had formerly been excepted and which were being placed within the scope of the new agreement the language contained in the fourth paragraph of the Mediation Agreement, as quoted in the Carrier's Statement of Facts, was agreed to and embodied in the Mediation Agreement. This language definitely provided that the placing of these excepted positions within the scope of the Clerks' Agreement 'shall not operate to change the present rates of pay' which were in effect on August 1, 1939. The rates of pay for the two positions here in dispute are the same as they were on August 1, 1939, and the duties of the positions have not been changed in any way. These rates of pay had been in effect for a long time prior to August 15, 1939, and when these excepted positions were placed within the scope of the Clerks' Agreement the Mediation Agreement definitely assured the Carrier that the rates would not be changed except through a general wage adjustment.

"It is the position of the Carrier that this claim has been disposed of through the Mediation Agreement and cannot be changed except in the same manner and therefore is not one on which this Board should render a decision. However, if the Board should retain jurisdiction over this case then it is the position of the Carrier that the language quoted in the Carrier's Statement of Facts from the fourth paragraph of the Mediation Agreement completely disposed of this matter and under the circumstances the rates of pay in effect are in accordance with the Clerks' Agreement and the claims should be denied."

There is in evidence an agreement between the parties bearing effective date of August 15, 1939.

OPINION OF BOARD: The evidence in this case discloses that the positions here in question were treated by the parties, since the effective date of the agreement of February 1, 1922 and prior to the effective date of the current agreement, as excepted positions. The positions, therefore, are covered by that provision of the Mediation Agreement of August 1, 1939, reading:

"The inclusion of any position which has heretofore been excepted from the application of the rules of the Clerks' current agreement effective February 1, 1922, shall not operate to change the present rates of pay."

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of September, 1940.