

Award No. 1435

Docket No. CL-1442

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (1) that the assignment of the Depot Master at Spokane to a shift covering a period of more than eight hours within nine is an improper practice and that the assignment be corrected; (2) that the incumbent be reimbursed at overtime rates for all time in excess of eight hours retroactive to October 25, 1939, based on Rules 1, 52, and 53 of the Clerks' Schedule."

EMPLOYEES' STATEMENT OF FACTS: "A position designated as Depot Master is maintained at Spokane passenger station and paid on a monthly basis. The occupant is required to exercise supervision over the waiting rooms and act as train announcer. His hours of service cover a period starting at 6:45 A. M. and ending at 9:45 P. M. On November 5, 1939, claim was filed with the Carrier for correction of the hours of service and payment to the occupant of the position at overtime rates for all time in excess of eight hours. Claim was denied."

CARRIER'S STATEMENT OF FACTS: "A position of Depot Master is maintained at Spokane passenger station and is paid a monthly rate of \$210.00. This Depot Master has no regular assigned hours but usually is on duty daily from 6:45 A. M. to 9:00 A. M., from 5:00 P. M. to 6:00 P. M., and from 7:15 P. M. to 9:45 P. M. He looks after passengers arriving and departing who need assistance; supervises the janitors, red caps and lawn tenders; looks after automobile parking at train times, and acts as depot policeman, (he has police authority by virtue of a deputy sheriff's commission)."

POSITION OF EMPLOYEES: "It is the contention of the Employees that the assignment of the Depot Master at Spokane to a split shift is in violation of various rules of the Clerks' Agreement."

"Rule 52 defines a day's work and reads as follows:

'Except as otherwise provided in this article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work.'

"Rule 53 is the 'Intermittent Service' rule and is quoted herein for your ready reference.

'Rule 53. Where service is intermittent, eight (8) hours' actual time on duty within a spread of twelve (12) hours shall constitute a

clerical work as described by Rule 2 (a) to which clerical workers under the Clerks' Agreement are entitled and clerical work which is peculiarly incident to other classes of work and which may rightfully be performed by employees in such other classes.

"In the present dispute, the Division is of the opinion that the clerical work involved in the preparation of the "8:00 A. M. report" and the "44 report" is both logically and historically incident to the work of dispatchers and may properly be required of them by the carrier. In passing, however, it may be noted that the carrier may assign a part of this clerical work—how much, it cannot be stated abstractly—to clerical workers under the Clerks' Agreement without violating the scope rule of an agreement which the carrier may have with this class of employees, unless such agreement specifically includes such incidental clerical work.

* * * * *

"The Division accordingly concludes that the carrier is requiring truck dispatchers to perform work which under Rule 2 (a) is clerical in character and which is not a necessary incident of the work of dispatchers. This, however, is not a violation of the agreement unless work of this character amounting to at least four hours each day is being performed by employees not included in the Clerks' Agreement."

"On the basis of these awards, and particularly Award No. 809, there is obviously no foundation for the Employees' claim.

"At no point on the Northern Pacific Railway where Depot Masters are employed are train announcers also employed. Depot Masters now and always have on this Railway announced the departure of trains in connection with their general duties as Depot Masters. This practice was in effect for more than a quarter of a century prior to the negotiation of the Clerks' Schedule and has been in effect during the entire period that the Northern Pacific current Clerks' Schedule and its predecessors have been in existence which covers a period of more than twenty years. This claim, therefore, is an attempt on the part of the Clerks' Organization to secure a departure from general accepted interpretation and application of schedule rules and does not square with the request made by them in February, 1940, that Depot Masters be included within the scope of the Clerks' Schedule.

"There is no foundation under schedule rules or under the facts in this case for the claim of the Employees that the Depot Master's position at Spokane comes within the scope of the Clerks' Agreement, and as a consequence there can be no foundation for the Employees' claim that the rules of the Clerks' Agreement are applicable to this position."

OPINION OF BOARD: The Scope Rule, No. 1, upon which this case is mostly based covers in general fashion "station employees." The uninformed mind could easily conclude that a depot master was a station employee within that coverage. But the informed men on the job, both management and employees, have long considered otherwise. That is shown by the history of the matter, antedating the now effective Agreement of August 15, 1922. The same practical viewpoint has obtained since. There is much evidence that the employees now feel that it should be otherwise. There is no evidence that they were of that opinion when the Rule went into effect.

The reason is probably that the duties of the station master normally include many that are supervisory. Compare U. S. Railroad Labor Board Decisions No. 2786 and 3411.

That viewpoint is strongly supported by the uniform practice not to bulletin vacancies when the position of a depot master is vacated for any reason. It is filled not by the exercise of seniority rights but by the unfettered choice

of management. Depot masters are not on the clerks' seniority rosters unless they have gotten there by reason of employment before they became depot masters.

This decision is based upon no mere acquiescence of an employe in the opinion of his employer. Normally, the former is in such position of subservience that acquiescence on his part should not count against him. But here, so far as the record shows, the representatives of an alert, efficient, economically powerful union seem to have been long of the opinion that depot masters were not station employes within the meaning of the rule, which is Rule 1 of the Northern Pacific Clerks' Schedule.

Conduct may be, frequently is, just as expressive of intention and settled conviction as are words, either spoken or written. Here there is so much uncontradicted evidence of unambiguous conduct by both parties to the issue, evidencing the conclusion which is considered determinative, that no course is open for a judicial pronouncement other than that the claim be denied.

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 there has been no violation of the Rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of May, 1941.