

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

"That the position titled 'Lease Agent' or 'Contract Agent' in the office of the Carrier's Chief Engineer in San Francisco, California, is covered by the present agreement with the Carrier and should be bulletined in accordance with Rule 33 of said Agreement."

EMPLOYEES' STATEMENT OF FACTS: "On or about March 23, 1936, there was established in the office of the Carrier's Chief Engineer at San Francisco the position titled 'Contract' or 'Lease Agent' which was assigned to Mr. W. L. Mogle, formerly employed as a Draftsman with the Carrier without being bulletined in accordance with Rule 33 of the Agreement.

"Since that time, the position of Contract or Lease Agent has been maintained in the office of the Chief Engineer without any substantial change in duties assigned thereto and has been occupied continuously since that time by Mr. Mogle. Although request has been made that this position be bulletined in accordance with Rule 33 of the Agreement, the Carrier has declined to comply with said request, claiming that the position was not subject to the application of the Rules of the Agreement. In handling this dispute in conference, it has been the contention of the Carrier that because of the duties required of the position of Lease or Contract Agent, the position is actually that of technical engineer which classification, according to the Carrier, is exempted from the rules of the Agreement by ex parte order No. 72 of the Interstate Commerce Commission. The employees have contended that an examination of the actual duties required of the position of Lease or Contract Agent reveals that the position is entirely clerical and not identified in any way with the duties performed by an engineer or any technically trained person. On this basis the dispute is herein submitted to the Board.

"Claim has been duly presented to carrier and has been denied."

POSITION OF EMPLOYEES: "It is the position of the Employees that the actual duties required of and performed by the employee classified as a Lease or Contract Agent in the office of the Carrier's Chief Engineer, are strictly clerical and covered by Rules 1 and 2 (a) of the Agreement.

"The duties assigned to the position of Lease or Contract Agent and performed by Mr. Mogle, the present incumbent are in general as follows:

were agreed to under Arbitration Award effective January 1, 1927. Position at that time was identified as 'Right of Way Agent' and as hereinbefore stated was filled by an employe not coming within the scope of the Clerks' Agreement."

CONCLUSION

"The foregoing conclusively shows that at no time since the establishment of position in dispute have the duties and responsibilities been of a nature that would bring it within the scope of the Clerks' Agreement, but to the contrary are such as to require the services of an employe having the scientific ability of a technical engineer and Carrier avers that the Clerks' Organization has no jurisdiction over this position; therefore, Carrier respectfully requests that the instant claim which is entirely without justification or merit be denied."

OPINION OF BOARD: It is unfortunate, as a matter of assistance to the Board, that the parties to this dispute did not reconcile their differences as to the specific duties and the responsibilities attaching to this position through the means of a joint check or investigation made on the property, but in the absence of such, the Board must resolve the dispute in the light of the ex parte statements made by each of them. While the statements of the respective parties in this case are not impossible of reconciliation, yet the Board feels that this is a duty which, under the Railway Labor Act, rightfully falls upon the employes and the carriers, and recommends that whenever possible this should be done on the property where, as in this case, the issue is purely a question of fact. Here there is no dispute as between the parties as to the interpretation or application of the controlling rule. The facts as to duties performed alone determine the issue. There is some conflict in the record as to whether the position which it is sought to bring under the current agreement is properly designated as lease agent or contract agent. The name given the position is immaterial. Whether or not it comes under the current agreement depends upon the duties performed by the occupant of that position rather than the title given to it.

The question the Board must determine in this case is whether the duties performed by the lease agent or contract agent are those of a clerical worker as contemplated by Rules 1 and 2 (a) of the current agreement as the petitioner contends, or whether they are the duties of a technical engineer as contended by the carrier. If this record shows that the assigned duties of the employe involved are contemplated by Rules 1 and 2 (a), the Board must sustain the claim; otherwise, the claim must be denied. There is no serious dispute between the parties as to the duties performed by the occupant now sought to be brought under the current agreement. The employes in the presentation of this case set forth the following as the duties assigned to lease or contract agent and performed by Mr. Mogle, the present incumbent.

"Handling Applications for Leases and Licenses, checking such Applications for conflicts with the policies and rules of the Carrier, previous rulings and precedents; handling correspondence in connection therewith and writing applications to proper individuals for their approval on questions as may be necessary.

"Handling Applications for Easements for road crossings including such routine correspondence as is necessary to complete applications; forwarding applications to various division offices for Engineering Department certification and necessary endorsements, transmitting applications to proper officials for consideration and approval of engineering and legal questions involved and upon final execution, transmitting of papers to division offices for recording.

"Handling of deeds, transmitting to proper officials for study of the legal points involved; taking the routine steps necessary to carry the deeds through to final conclusion; doing necessary clerical work and such routine correspondence as is required."

Carrier gives a more detailed statement of the duties of the lease or contract agent. This is set forth in the carrier's original submission. It shows that the contract agent has charge of leasing property belonging to the carrier; that he is required to make reports in regard to grade crossings from the standpoint of safety, public convenience, and necessity, and as to what constitutes proper crossing protection. He has charge of roadways, pipe lines, telephone, telegraph and power lines, and the purchase and sale of property belonging to the company. He investigates and reports on licenses and easements for private road crossings, overhead and under-grade pipe lines, power lines, telegraph lines, telephone lines and whether or not they should be granted.

The duties of the position are many and varied and this is shown by the fact that all the incumbents that have held this position have had training either in engineering schools or extensive experience in engineering work. A careful study of the duties required of the lease agent or contract agent, as set out in this record, convinces this Board that his duties are specialized, and that the services of an employe with technical engineering training is required. The position, therefore, does not come under the Clerks' Agreement.

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 current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of July, 1941.