

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

THE MINNESOTA TRANSFER RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the Terminal Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that

(1) Carrier violated and continues to violate the current agreement when, effective January 16, 1940, it abolished Position No. 4, Chief Traffic Clerk, rate \$199.30 per month, demoted the incumbent, Mr. Yasak, to the next position on the traffic desk, namely, Disposition Clerk, rate \$166.80 per month, while requiring that he perform substantially the same class of work previously performed, and

(2) That Position No. 4, Chief Traffic Clerk, shall now be restored and employe Yasak compensated for wage loss suffered."

EMPLOYEES' STATEMENT OF FACTS: "Since August 1, 1921 George Yasak has been the lead man on the traffic desk, his position being identified as Chief Traffic Clerk, and as of Jan. 1, 1940 the position carried a rate of \$199.30.

"As Chief Traffic Clerk Mr. Yasak's duties were in the main the performance of routine work associated with that desk, such as signing bills of lading and marking them up for outgoing trains, taking weights and diversion orders by 'phone and applying necessary information to waybills, see to it that waybills were sent to yard office in time for outgoing trains, recording of icing and heater charges, check work left by night force which they were unable to handle principally because of incorrect destination, car initials, car numbers, etc. Prepare record of each car billed to stop at Minnesota Transfer to part unload so as to protect stop charges, notifying Claim Department and consignee, check waybills of cars in yard to ascertain if car was 'bad order' or for what other reason it had not moved, advising the Yardmaster with respect to such cars and following up until cars were moved, check bills of lading on cars billed previous day showing the amount of advance charges on shipper's bill of lading, this being done to see that the proper amount of credit was surrendered by the shipper or the Western Weighing & Inspection Bureau and that the out-billing was proper as to transit reference, make out a slip each day for himself and the four others employed on the traffic desk and handle correspondence occasionally received from the Chief Clerk relating to work of the traffic desk.

"Effective January 16, 1940 the position of Chief Traffic Clerk was abolished, Mr. Yasak being demoted to the next position in rank on the traffic desk, this position carrying rate of \$166.80 per month, and on the

Chief Clerk to Agent
 Chief Clerk, Traffic Department
 Chief Clerk, Demurrage Department
 Chief Clerk, Claim Department
 Chief Clerk, Car Department
 Chief Revising Clerk
 Chief Clerk and Cashier, Accounting Department
 Night Chief Clerk.

"In 1921, there were 13 employes in the Traffic Department, who were supervised by the Chief Clerk of that Department. Since, there have been reductions made to meet the decrease in the volume of business, so that at the present time, effective in November 1939, there were but four employes in this Department, and it was considered unnecessary to employ a chief clerk for the supervision of three men.

"Rule 19 of the agreement reads—

'Rule 19—Excepted positions

'Employes filling or promoted to excepted or official positions shall retain their rights and continue to accumulate seniority in the district from which promoted.

'When excepted or official positions are filled by other than employes covered by these rules, their seniority will commence with the date they are appointed to such positions.'

"The above rule protects the employe on excepted position, and also grants to employes on excepted positions, seniority in the same seniority district where assigned."

OPINION OF BOARD: At the threshold of this dispute we are met with the Carrier's contention that the position in question is not within the scope of the agreement effective July 1, 1921. Rule I defines the scope of the agreement and, by way of qualification contains the following:

"This agreement shall not apply to . . . Chief Clerks. . . ."

Considered alone this language would seem to take the position in question out of the scope of the agreement. But the Organization contends that, by common consent, the position has, over a period of nearly twenty years, been treated as within the scope of the agreement. That this contention is abundantly supported by the evidence is manifest. It is unnecessary to summarize the evidence here further than to call attention to the fact that the Carrier expressly acknowledged the practice by giving notice to the General Chairman of the abolishment of the position. Furthermore, the Carrier did not, during the discussions of the dispute on the property, advance the theory that the position was not within the scope of the agreement. Only after the dispute reached the Board did the Carrier make such contention. Under the facts of this record we hold that the Carrier cannot now be heard to say that the position is not within the scope of the agreement. This holding finds ample support in Awards 72, 116, 1289, 1435. See also Docket CL-1597, Award 1645.

Considering the merits of the dispute it is clear that, in the light of Rules 59 and 62, there has been a violation of Rule 61, which provides:

"Established positions shall not be discontinued and new ones created under a different title, covering relatively the same class of work, for the purpose of reducing the rate of pay or evading the application of these rules."

During the progress of the dispute the Comptroller of the Carrier wrote the General Chairman as follows:

“It has been admitted by the Management that the work performed before and after the abolishment was almost identical and it was further admitted at the hearing by Agent Hurley and Mr. Yasak.”

Notwithstanding this admission the Carrier contends that there were supervisory duties attaching to the position of Chief Traffic Clerk which had become unnecessary by reason of a substantial decrease in business, with consequent reduction of force, over a period of ten years or more. We fail to perceive from the record any substantial change in the supervisory duties attaching to the position at the time it was abolished. In any event, in face of the Carrier's written admission above quoted, it will not now be heard to say that there was any substantial change in the supervisory duties attaching to the position at the time it was abolished.

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 employes involved in this dispute are respectively carrier and employes 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 carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1941.