

Award No. 2136

Docket No. CL-2140

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated its agreement with the employees when it nominally abolished rank and file position of Secretary rated at \$6.48 per day and in lieu thereof created what it calls an excepted position of Secretary to Master Mechanic at a rate of \$165.20 per month; that the rank and file position of Secretary shall be re-established, and all employees who have suffered wage loss by reason of the action of the Carrier be compensated for all such wage loss sustained.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 16, 1936, the effective date of Agreement No. 6, there existed on the Cincinnati District located at Stevens, Kentucky a position of Secretary to the Assistant Master Mechanic, Mr. Hinerman, which was excepted from the Agreement then effective. However, during schedule negotiations, the position was returned to that of rank and file, and shortly after November 16, 1936 the rate was converted from a monthly to a daily basis of \$6.08 per day, and to this was added 40c August 1, 1937 by reason of general wage increase brought about through Mediation Agreement resulting in a daily rate of \$6.48 per day.

On January 1, 1940 the Management in reorganizing the Mechanical Department made numerous changes without conference or agreement with the Organization. Mr. P. T. Briers was moved to Stevens, Kentucky and given the title of Master Mechanic. He then proceeded to nominally abolish the rank and file position of Secretary, rated at \$6.48 per day, and in lieu thereof to create without authority or agreement with the Organization what he calls an excepted position of Secretary to Master Mechanic at the same rate of pay except on a monthly basis of \$165.20 per month rather than \$6.48 per day as previously paid. The position thereafter performed the same work previously performed by the rank and file position of Secretary, nominally abolished.

When Agreement No. 6 was negotiated, we also set up by agreement a list of excepted positions listing the Officers of the Carrier at that time and setting forth the excepted positions to which they were entitled. There was no Master Mechanic at Stevens and we did not agree or provide for any excepted positions for a Master Mechanic at that point; in fact we reduced the one excepted position at that point to rank and file.

The management takes the position that when it establishes an excepted position on a monthly rate basis, that the incumbent of the position is sub-

sitions of Chief Clerk and Secretary to the Master Mechanic at Stevens, Kentucky. The employee's position is erroneous because the positions in question were covered by the list of excepted positions already agreed to and filed with the Management and General Chairman.

OPINION OF BOARD: By the terms of the current agreement which became effective November 16, 1936, the position of Secretary to Assistant Master Mechanic at Stevens, Kentucky, was taken from the list of excepted positions and restored to rank and file. On January 1, 1940, the Carrier discontinued the position of Assistant Master Mechanic at this point and with it the position of Secretary. At the same time the Carrier established the position of Master Mechanic with the subordinate positions of Chief Clerk and Secretary. The Carrier claims and for the purposes of this decision we shall assume that these were excepted positions. The work of the Secretary to the Assistant Master Mechanic was transferred to the holders of these new positions.

The Committee contends that the agreement has been violated in several respects. We agree that there has been a violation of Rule 44 which reads as follows:

"Rule 44—Maintaining Rates

No positions shall be abolished and new ones created under the same or different titles covering relatively the same class or grade of work which will have the effect of reducing rates of pay or evading the rules of this agreement."

The effect of the action taken by the Carrier was to evade the agreement by taking work which came within it, namely, that of the position of Secretary to the Assistant Master Mechanic, and giving that work to those not covered by the agreement. This the Carrier had no right to do. Awards 139, 751, 1276, 1298, 1773, 2051.

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 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 5th day of April, 1943.