

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Henry J. Tilford, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood of Railway Clerks that the work of positions assigned to recruiting laborers and other new employees falls within the scope and operation of the Clerks' Agreement; that such work shall be classified, rated, bulletined, and assigned in accordance with the provisions of the Clerks' Agreement; and that all employees adversely affected by reason of failure of the Railroad properly to classify, rate, bulletin, and assign such work shall be compensated for all wage loss sustained since the positions were created.

EMPLOYES' STATEMENT OF FACTS: During the early part of 1942 positions were created on both the Eastern and Western Divisions, the preponderant duties of which are recruiting laborers and others for employment on the Western Pacific.

To the knowledge of the employees, like positions have not previously been in existence during the life of Clerks' Agreements on this Carrier. Carrier has designated two of these positions as "Assistant Roadmaster."

POSITION OF EMPLOYES: The following rule is cited from the agreement on working conditions between the parties bearing effective date of October 1, 1930:

"Rule 1. These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted in Rules 2 and 3.

(1) Clerks—

- (a) Clerical workers;
- (b) Machine operators.

(2) Other office, store and station employees—such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, operators of certain office or station appliances and devices, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors.

(3) Laborers employed in and around stations, storehouses and warehouses."

It is the position of the employees that the classification of "Assistant Roadmaster" is not proper for the positions embracing the duties described in Employees' Statement of Facts. The group into which positions of "Assistant Roadmaster" fall is described in the rules of the Interstate Commerce Commission as follows:

department on the Railroad. He travels a considerable portion of his time and Carrier emphatically states that neither this position nor any of the others involved in the recruitment of employes comes within the provisions of the Clerks' Agreement and strongly recommends that the claim of employes be declined.

OPINION OF BOARD: The question for decision in this dispute is: Do the positions of Assistant Roadmasters, established by the Carrier in 1942, and the position of Supervisor of Labor Employment, established in 1944, come within the purview of the collective Agreement between the parties?

The undisputed facts are: On June 8, 1942, the Superintendent of the Western Division appointed an Assistant Roadmaster. This position was discontinued on June 15, 1943. A like position was established on the Eastern Division January 16, 1943, and was also discontinued the following June. The duties of these Assistant Roadmasters were to recruit labor for track work in the Maintenance of Way Department. The position of Supervisor of Labor Employment, established in January 1944, was attached to and made a part of the staff of the Vice President and General Manager.

The Petitioner contends that the positions classified as Assistant Roadmasters were in fact those of Clerks or clerical workers in that they performed clerical duties and that they were within the scope and operation of the then current agreement which bore effective date of October 1, 1930; that the position of Supervisor of Labor Employment is likewise a clerical position and within the scope and operation of the collective Agreement bearing effective date of December 16, 1943. Petitioner also contends that work performed by these employes, however classified, is that of "Clerks and Clerical Specialists," each of whom while so engaged should properly be entitled a "Labor Agent," since that designation is indicated by the rules of the Interstate Commerce Commission, though not controlled thereby.

The essentials of the Carrier's contentions so fully appear in its Submission as to obviate the necessity of reiterating them. Since the Petitioner does not controvert the statement of the Carrier that it has long been its policy to permit each official to employ personnel under his jurisdiction, or the Carrier's further statement that because of the shortage caused by the Selective Service Act and other war conditions the Assistant Roadmasters then in service could not recruit sufficient labor and at the same time perform their supervisory duties with respect to road maintenance, it is apparent that the decision of this claim turns upon whether or not an Assistant Roadmaster's position is definitely included within Rule 1, "Scope," of the Agreement, and if not, whether the duties of the position are encompassed therein under the general terms "Clerks; (a) Clerical Workers." Neither the term "Assistant Roadmaster" nor any employe definition covering the duty of recruiting track labor appears in Rule 1, and the Petitioner in its Submission says:

"During the early part of 1942 positions were created on both the Eastern and Western Divisions, the preponderant duties of which are recruiting laborers and others for employment on the Western Pacific.

"To the knowledge of the employes, like positions have not previously been in existence during the life of Clerks' Agreement on this Carrier. Carrier has designated two of these positions as 'Assistant Roadmaster'."

It is apparent, therefore, that in the negotiation of the present controlling Agreement and the prior Agreement there was no discussion of Assistant Roadmaster positions or of the duty of recruiting and employing labor.

Actually, the confronting record contains no showing of the performance of clerical work by the Assistant Roadmasters here in question. It does show, however, that to them was assigned the duty of recruiting and employing track laborers to meet the conditions created by the man power shortage.

In answer to Petitioner's contention that since the classifications of the Interstate Commerce Commission have persuasive value in the interpretation and application of collective bargaining agreements they should be given weight in the consideration of the confronting case, Carrier points out that the classification of "Labor Agent" in connection with positions in which the preponderate duties of incumbents are to perform independently responsible and technical clerical work appears only in the index to a publication of the United States Railroad Labor Board entitled, "Rules for Reporting Information on Railroad Employes"; and that no definitive characterization of the duties of the position of "Labor Agent" is to be found, beyond the classification of the position as coming within clerical classification CCK-31 (p. 87) and reporting division 9 (p. 23), which contain descriptive notes of similar import, the one on page 23 reading as follows:

"This division includes positions in which the preponderant duties of incumbents are to perform independently responsible and technical clerical work; or to perform work requiring special knowledge of financial, cost or other technical accounting, or of statistical theory and methods."

It is not shown by the record that the Assistant Roadmasters in question were required to perform any clerical work, much less "independently responsible and technical clerical work." Doubtless they do perform some work of this character but the same is true even of the President of a railroad, and of Civil and Mechanical Engineers and other officials who are not classified as Clerks or clerical workers within the meaning of the Scope rule of the Clerks' Agreement. See Awards 806 and 1418.

Nothing definite appears in the record as to the duties of the Supervisor of Labor Employment, whose position was created in January 1944, other than that the position was created because of the necessity of constantly recruiting personnel in all branches of the service, and that it was attached to and made a part of the staff of the Vice President and General Manager.

On the whole, we think it clear that Petitioner has failed to meet the burden of showing that the positions in question are included within the 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 Employees 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 has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of April, 1945.