

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY; SAN ANTONIO, UVALDE &
GULF RAILROAD COMPANY; SUGARLAND
RAILWAY COMPANY; ASHERTON &
GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

- (a) The position of Tax Accountant in the Auditor's office at Houston, Texas, is covered by the Clerks' Agreement. Also
- (b) Claim that the position be bulletined and filled under the rules of the Clerks' Agreement and that all employees involved in or affected by the violation be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: During the latter part of 1943 the Auditor advised the General Chairman that he had requested authority to establish a position of Tax Accountant. The Auditor further stated that, when the position had been authorized, he desired that it be added to Paragraph (c) of Rule 7.

The position of Tax Accountant was authorized and established effective December 1, 1943, and has been filled and worked without regard to the Clerks' Agreement.

The work assigned to the Tax Accountant is, as the title indicates, the handling of income and other tax matters, previously handled by a Traveling Accountant under the rules of the Clerks' Agreement.

The Carrier contends the position of Tax Accountant is an official position and not covered by the Clerks' Agreement.

POSITION OF EMPLOYEES: The employees quote the following rules and Memorandum Agreement as being particularly applicable in the instant case.

"RULE 1—EMPLOYEES AFFECTED

"(a) These rules shall govern the hours of service and working conditions of all of the following class of employees of the above

carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties."

When consideration is given to the facts of record in this case which conclusively show:

1. The position of Tax Accountant in the Auditor's Office at Houston is properly designated an official position;

2. The position of Tax Accountant was created for the express and primary purpose of relieving the Assistant Auditor of his official duties in connection with the handling of tax matters due to the increased volume of work and the continuously increasing complexities involved in the handling of tax matters for the Carrier;

3. The work performed on the position of Tax Accountant is exactly the same work that has previously been performed on the official position of Assistant Auditor;

4. No work is being performed on the position of Tax Accountant that should properly come within the scope of the Clerks' Agreement, or that was previously performed on a position coming under the provisions of the Clerks' Agreement;

5. No position coming within the scope of the Clerks' Agreement has in any way been adversely affected as a result of establishing the official position of Tax Accountant;

it is clearly evident that there is no basis for the contention and claim of the Employees as set forth in paragraphs (a) and (b) of their Ex Parte Statement of Claim. Therefore, it is the position of the Carrier that the contention of the Employees should be dismissed and the accompanying claim accordingly denied.

OPINION OF BOARD: The question for this Board to determine is: Is the position of Tax Accountant in the Auditor's Office at Houston, Texas, an official position as contended by the Carrier, or is the position one covered by the Clerks' Agreement of November 1, 1940 and a Memorandum of Agreement, as contended by the Petitioner?

Petitioner relies upon Rule 1 (the Scope Rule), Rule 2 (Classification Rule), Rule 7 (Promotions, Assignments and Displacements Rule), Rule 9 (Bulletins Rule), and the Memorandum of Agreement, which reads:

"(a) It is recognized and agreed that all of the work referred to in Rule 1 of the Agreement dated November 1, 1940, between the Carrier and the Brotherhood belongs to and will be assigned to employees holding seniority rights and working under the Clerks' Agreement, except as provided below. * * *"

The record discloses the following facts. Late in the year of 1943, the Auditor, L. M. Edrington, advised General Chairman Dyer of the Clerks' Organization that he had requested authority to establish the position of Tax Accountant and stated if such position was authorized, he desired to add it to the positions covered by paragraph (c) of Rule 7, (which shows a list of positions excepted by the seniority rule). The General Chairman stated that the suggestion would be agreeable if the Carrier would agree to remove one of the positions of Traveling Accountant in Auditor Edrington's Office from Rule 7 (c) as he did not want to increase the number of excepted positions. Without any further conference in regard to this subject the Carrier established the position of Tax Accountant on December 1, 1943 and then placed Traveling Accountant Peterson in the new position. The two positions of Traveling Accountant are under Rule 7 (c).

Petition in its ex parte submission says:

"All income tax reports were prepared by an employe working under the Clerks' Agreement prior to December 1943".

To support this contention Petitioner relies upon Exhibit "A". Exhibit "A" contains extracts of a letter written by Peterson addressed to Edrington and is dated July 3, 1943. The pertinent paragraph of that letter is as follows:

"I have prepared all income tax reports exclusive since 1938—and prior to that time assisted in preparing them. The other duties I now perform have not changed in nature during the last fifteen years."

The letter just referred to was written in reference to a claim in Docket CL-2306, Award No. 2343. That claim involved the position of Office Manager in the Auditor's Office at Houston, Texas.

In the Carrier's submission, it denies that the work of Tax Accountant was done by any other person than E. S. Banks prior to December 1, 1943. Banks held the official position of Assistant Auditor and handled as a part of his duties all matters pertaining to income, excess profits taxes, etc. To support its statement the Carrier relies on three letters. The first one is written by Banks and addressed to Edrington, dated April 17, 1946. In effect it states that prior to the year 1942 large deficits in taxable income were sustained and no income taxes were payable; in those years preparation of returns consisted merely of copying figures from records on tax forms. But due to the increase in traffic in 1942 and the enactment of the Federal excess profits tax and the sharp increase in income tax rates, he (Banks) took charge of the preparing of income and excess profits tax reports until that work took practically all his time and it was necessary to create the position of Tax Accountant to relieve him. On April 15, 1946, Peterson wrote Auditor L. M. Edrington in which letter he says, in speaking of the duties as Tax Accountant, "Since this position was created, I have been performing the same class of work under it as was formerly assigned to Mr. Banks as Assistant Auditor * * * and the work which I perform as Tax Accountant has not diminished any work performed by the clerical forces."

Carrier also relies upon a letter written by Peterson to Mr. H. E. Roll, Chief Personnel Officer, in which he states:

"The work referred to in my letter of July 3, 1943, is not the same kind or class as is now performed under the position of Tax Accountant."

Thus, we have a conflict between the evidence offered by the Petitioner and the Carrier. The Petitioner mainly relies upon Peterson's letter dated July 3, 1943, and its Exhibit "H". The Peterson letter of July 3, 1943, was written in regard to Award No. 2343, and at most is impeaching evidence and has very little probative force. Exhibit "H" is a bulletin dated July 2, 1945, and under the description of duties it does not refer to Federal income taxes or excess profits taxes. This Exhibit does not support Petitioner's contention. We think that Peterson's letter of July 3, 1943, was satisfactorily explained by the Carrier. We have concluded from the entire record that the duties performed by the position of Tax Accountant were not any of the duties performed by the position of Traveling Accountant and that the duties of the Tax Accountant were formerly performed by E. S. Banks who held an official position. Therefore, none of the duties performed by the Tax Accountant were formerly performed by an employe covered by the Clerks' Agreement.

Nor do we think that the position of Tax Accountant comes under the Scope Rule. Rule 1 names "clerks", "accounting", "bookkeeping machines", and "the performance of clerical work or in lieu of clerical work." Rule 2 specifically mentions "compiling, writing and/or calculating incident to keeping records and accounts * * * reports, statements, or similar work * * * shall be designated as clerks." Under these rules and the memorandum Agreement there is no mention of the position of Tax Accountant or the duties of preparing Federal income tax or excess profits tax reports. It would require a person skilled in Internal Revenue Commission rulings and

court decisions to properly prepare income tax and excess profits tax reports. There is no showing in this record that such reports were in contemplation of the parties when this Agreement was executed. Tax Accountant is much more than a clerical position and the really important part of the work goes far beyond the compiling, writing and/or calculating incident to keeping records and accounts, reports, statements or similar work which would ordinarily be regarded as clerical.

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 did not violate the Agreement.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1947.