

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

H. Nathan Swaim, Referee

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**PARTIES TO DISPUTE:**

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

**GREAT NORTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When it removed and continued to remove Yard Clerks' duties and work at Minneapolis Junction Yard out from under the scope and operation of the Agreement, assigning said work to employees not covered by the Agreement who hold no seniority rights thereunder entitling them to perform said work.

2. That Clerk, Geo. E. Mitchell, Sr., an employee adversely affected by reason of this violation of the Agreement be compensated for eight hours at the proper rate of pay for Nov. 11, 1947 and each and every day thereafter, until such time as work is properly reinstated to the Agreement.

**EMPLOYEES' STATEMENT OF FACTS:** There is assigned at Minneapolis Junction Yard, a position known as Assistant Agent whose assigned duties are identical to that of Chief Yard Clerk, inasmuch as he has supervision over the Yard Office and directs the work of all Yard Clerks working in and out of such office whose positions are under our Agreement.

For many years past, it had been a practice to promote a Yard Clerk to this position when vacant but on account of the title given to it, the R.R. Telegraphers made claim that the position should be filled from their Seniority Roster. The Carrier did so and has continued doing it. As stated, the duties of the position are those of a Chief Yard Clerk. We have made numerous checks of the work performed by this employee and, at no time, have we found anything outside of clerical work and work of a supervisory nature and the supervision that is attached to this position is identical to that performed by Chief Yard Clerk.

As stated before, the position has been filled by bulletin from Telegrapher's Seniority Roster and the Telegraphers have been in the habit of giving up this position shortly after it is assigned to them. Each time it is given up by a Telegrapher, the work is then assigned to a Yard Clerk. The last time was prior to Nov. 11, 1947 and was then assigned to Geo. E. Mitchell, Senior Yard Clerk at Minneapolis Junction who performed it over a considerable period of time until the Operators were able to find a man who would consent to take the position. A young Operator was located and requested assignment to this position, reported and was put on at 8:00 A. M. on Nov. 11th.

cumbent thereof, regardless of whether such incumbent comes from the ranks of the clerks or the ranks of the telegraphers.

However, the Carrier holds that should your Board decide that the position in controversy herein is such, by virtue of its duties, as to constitute one which should properly be placed within the scope of the Clerks' Agreement, you cannot under the circumstances herein find justification for the money claim advanced by the organization.

For the reasons heretofore stated, the Carrier has set up for your Board a rather exhaustive Statement of Facts since it is of more importance to us to have this dispute settled as between the two contending organizations than to advance any detailed argument for or against either, but we do wish to direct your most particular attention to the fact, as brought forth in the Statement of Facts, that regardless of which agreement you may hold to cover, there can be no question but that the duties of such position are definitely of a supervisory nature and, therefore, should be accorded the same status as to limited coverage by schedule rules as is accorded other supervisory positions of a similar nature in both Clerks' and Telegraphers' Agreement.

Inasmuch as there are, or will be before your Board before this case can be heard and decided, two cases instead of one involving the incumbency of this position, the Carrier prays your Board to consider such cases concurrently, since, it is our belief that only by your so acting can an equitable award be rendered in either case.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This controversy involves a position at Minneapolis Junction designated as "assistant Agent." The Organization claims that it is a clerical position which was improperly taken from the Clerks' Organization and given to the Telegraphers' Organization on November 11, 1947. The record seems to show clearly that the work of this position does bring the position within the Scope Rule of the current Agreement between the Carrier and the Clerks' Organization.

There is no serious dispute between the parties as to the duties of the position nor as to those duties being practically the same as those of Chief Yard Clerk in other yards of the Carrier. The current Clerks' Agreement expressly covers "clerical supervisors" in Rule 1(c). The present Agreement with the Clerks became effective December 1, 1944.

The first Agreement between this Carrier and the Clerks, effective March 1, 1920, expressly accepted therefrom "Supervisory and Assistant Agents at the following stations \*\*; \*\* Minneapolis Jct."

The second Agreement between these parties, effective October 1, 1925, excepted therefrom "Chief Clerks, personal stenographers \* \* \* at the following stations: \* \* \* Minneapolis Freight" but did not mention assistant agents nor Minneapolis Junction as being excepted. By the omission of the exception of assistant agent at Minneapolis Junction from this second and the current Clerks' Agreement we may assume that the parties did not mean to except it.

The Telegraphers' Organization has had eight Agreements with this Carrier, the first effective April 1, 1919, and the last August 1, 1947. All of these Agreements from 1919 to the seventh, effective March 1, 1944, contained a rule on "Excepted Positions" which provided that:

"The provisions of this schedule will not apply to Agents whose duties are supervisory and who do not perform routine office work, \* \* \*. The following agencies are supervisory, and no routine office work is performed by the agent: \* \* \* Minneapolis Jct. \* \* \*."

In each of these seven Agreements this rule on excepted positions did list assistant agents at some of the locations. At Minneapolis Junction there was neither an "agent" nor an "agency" only this "assistant agent."

The last Telegraphers' Agreement effective August 1, 1947, discloses a change in this Rule in that the excepted positions are brought in under certain of the Rules of the Agreement and after naming the location "Minneapolis Jct." we find the designation "Assistant Agent."

The Carrier now contends that in each of these Telegraphers' Agreements the position here in question was covered in the Rule on excepted positions because there was never an agent at Minneapolis Junction and this one position of assistant agent was the only one which the parties could have intended to cover by the designation of "Minneapolis Jct."

The Telegraphers' Agreements from June 1st, 1923, to March 1st, 1944, each carried a rule on non-schedule promotions, Rule VII (b) which provided:

"Vacancies in the position of train dispatchers and exclusive agents not covered by this schedule will, so far as possible, be filled by promotion of employees specified in Article I, when qualified."

The 1944 Telegraphers' Agreement omitted from this Rule the provisos as to possibility and qualification and added that in filling such vacancies the Carrier might select employees without regard to seniority.

In the current Telegraphers' Agreement this Rule reads:

"Vacancies in the position of Train Dispatchers, Supervisory Agents and Assistant Agents listed in Article XXX(c) will be filled by promotion of employees specified in Article I. The Carrier may select the employees so promoted without regard to seniority."

Consideration of the above rules and the actions of the Carrier leads us to believe that neither the Carrier nor the Telegraphers' Organization, prior to June, 1946, considered this position of Assistant Agent at Minneapolis Junction an excepted position of supervisory agent under Rule XXX(c) of the Telegraphers' Agreements.

From June 4, 1914, to June 15, 1946, this position was filled continuously by Clerks who had been promoted to this position.

From 1923 to 1947 vacancies in this position, under the above rules, VII(b), were to be filled "so far as possible" from the ranks of the Telegraphers, "when qualified", if this position was actually an excepted position named in Rule XXX(c). For almost twenty-five years, however, the Carrier filled this position with Clerks without any apparent objection from the Telegraphers.

On the other hand we find, as we pointed out above, that the 1920 Clerks' Agreement expressly excluded "Supervisory and Assistant Agents" at Minneapolis Junction and the 1925 and 1944 Clerks' Agreements did not contain such exclusion.

From all of the above we must conclude that up until June of 1946 all parties, the Carrier, the Clerks and the Telegraphers, considered and treated this position as a position covered by the Clerks' Agreement and that this position was not covered by the Telegraphers' Agreement until August 1, 1947.

The Carrier insists, however, that this position cannot be considered as coming within the scope of both Agreements. Subsequently it was suggested that this controversy has been fully and completely settled against the Clerks by our Award 4084, which involved a controversy between this Carrier and the Telegraphers' Organization over this same position.

There the Telegraphers' Organization was contending that this position was no longer a supervisory position and should be changed to a routine position under the provisions of Article XXX(c). In that Award we found that "there had been no change in duties of the position since the last agreement was negotiated, effective August 1, 1947, in which the position was listed under Article XXX(c)." We said that the claim that the position was

never a supervisory one and was listed as such because of a misunderstanding of the facts was not a tenable one; that a position once placed under Article XXX(c) can be removed therefrom only after conference and agreement between the parties to that Agreement. The Telegraphers' claim there was denied.

We did not there decide that this position was properly under Rule XXX(c) of the Telegraphers' Agreement. We only decided that, so far as the Telegraphers' claim was concerned, they were bound by the Agreement they had executed with the Carrier and that they could remove the position from Rule XXX(c) only pursuant to the provisions of that contract.

On the confronting claims, however, we must hold that the Carrier violated its Agreement with the Clerks' Organization by removing the duties and work of this position from the scope and operation of the Clerks' Agreement and assigning such work to employees not covered by the Clerks' Agreement; that such position shall be restored to the Clerks' Agreement, and that said position shall be subject under the Clerks' Agreement to the same Rules as are other comparable Chief Yard Clerks thereunder.

In view of the circumstances surrounding this case, however, we believe that Claim (2) should be sustained only for the difference between the rates of pay of this position and the position Claimant is now occupying and only for the period from this date until such time as the work is reinstated 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 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 as alleged.

#### AWARD

Claim (1) sustained.

Claim (2) sustained only to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 13th day of December, 1948.