

Award No. 7238

Docket No. CL-6905

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

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 rules of our current Agreement, effective September 1, 1950:

1. When on February 16, 1947 they assigned the position, with the title of Agent in the Commissary Department at St. Paul, Minnesota, with a salary of \$275.00 per month, with assigned hours 6:00 A. M. to 11:30 A. M. —6:00 P. M. to 8:30 P. M., a spread of 14 hours 30 minutes, 7 days per week.

2. That the Carrier now be required as of October 25, 1951 to comply with the Agreement of September 1, 1950 by making this position subject to the Scope Rule of said Agreement and make the rules applicable to the Employee who filled this position, Emmett Dixon, as of the above mentioned date, October 25, 1951.

EMPLOYEES' STATEMENT OF FACTS: On February 16, 1947, the Carrier established a position in the Dining Car Department at St. Paul, Minnesota, with the rate of \$275.00 per month. They assigned this employee 8 hours within the spread of 14 hours 30 minutes, seven days a week. This position did not come to our attention until sometime in 1951. We called the attention of the Management to this violation, and inasmuch as they refused to change it on October 25, 1951, we filed a claim in behalf of Mr. Dixon. After considerable correspondence and many conferences in an attempt to settle this with officials of the Carrier, up to and including the highest official, with whom appeals are to be made, the Carrier on March 9, 1953 positively denied this claim, contending that the position was a supervisory one, and not coming within the scope of our Agreement.

POSITION OF EMPLOYEES: There is, in existence, between the Carrier and the Employees, carrying the effective date of September 1, 1950, an Agreement which contains the following rules:

RULE 1—SCOPE

These rules shall govern the hours of service and working conditions of the following class of employees, including employees at King St. Station:

"Employees promoted to positions excepted by Rule 3, or to official positions, shall retain all their rights and continue to accumulate seniority in the district from which promoted."

As to the duties of this position not being of a supervisory nature, we have shown in our Statement of Facts that his duties included the direct supervision of employees going on duty, that he was responsible for seeing they were properly uniformed and in condition to perform their duties satisfactorily, and that he had authority to refuse to permit any employee to go out on a run when in his judgment such employee did not meet these requirements. No other officer or subordinate official of the Dining Car Department was present when the personnel of the Empire Builder went on duty in the morning, nor when the west bound train was at St. Paul in the evening.

As to this position being specifically excepted from the Scope of the Clerks' Agreement, we can see no need for such exception since the duties performed were such as were not included in such scope. There are many official and subordinate official positions on the railroad, the incumbents of which have seniority rights on Clerks' rosters, relative to which no exception is specifically included in the agreement, such as fuel supervisors, passenger agents, rules examiners, etc., some of whom perform a considerable amount of clerical work, which is not the case of the Agent, subject of this dispute, and relative to whom no exceptions are shown in the Clerks' Agreement, even where their duties are not of a supervisory nature, as were those of this Agent, and about which no question has ever arisen.

The Carrier holds, therefore, that it has been clearly shown that:

1. The position of Agent in the Dining Car Department was clearly of a supervisory nature.
2. The duties of the position were not those of any of the positions listed in the Scope rule.
3. The Classification rule has no application, since there was not even an hour of clerical work, much less the four hours specified in such rule.
4. This position had been in force for over four years before any question relative thereto was raised by the employees who, apparently, saw no exception to it during that time, although there had been no change in the duties and responsibilities of the position.
5. The position was clearly that of a subordinate official, not in any way covered by the Scope rule of the Clerks' Agreement.
6. No violation of any rule having transpired, the claim must be denied.

It is hereby affirmed that all data herein submitted in support of Carrier's position has been submitted in substance to the Employee Representatives and made a part of the claim.

(Exhibits not reproduced).

OPINION OF BOARD: At the time the "Empire Builder" was placed in operation, February 22, 1947, the position here in question was established at St. Paul. The east bound train arrived in St. Paul at 7 A. M. and left for Chicago at 7:15 A. M. The west bound train arrived at 7:45 P. M. and left for the West Coast at 8:15 P. M. A part of this train's equipment was a dining car and a coffee shop car. On the east bound trip the crews of these cars were changed in St. Paul. Carrier established the position here in question, designated as "Agent", with the following duties in the Dining Car De-

partment. He went to the commissary at 6 A. M. and picked up stewards' checks, menus, etc., and waiters' and cooks' white uniforms, aprons and caps and took them to the station. At the station he checked the crews in at 6:30 A. M., and if any failed to show up he secured replacements, either by calling others or by getting members of the crew from the Coast to continue to Chicago.

It was also the responsibility of the incumbent to see that crew members were sober and in proper physical condition to perform their duties. After the departure of the train, the Agent returned to the commissary, assembled checks, menus, etc., for the next train. He was then free until evening when he returned to perform similar duties in connection with the west bound train. His duties were completed at approximately 8:15 P. M., with the departure of the latter train. Thus the assigned hours of this employe were 6 A. M. to 12:00 noon and 6 P. M. to 8:30 P. M., or approximately 8½ hours in a 14½ hours period, seven days per week.

This position was not bulletined. The Carrier appointed the Agent and paid him \$275.00 per month for this service. No protest was made until October 25, 1951, at which time the Brotherhood's Division Chairman complained of a violation of Rule 30, and asked that the occupant be paid two hours and thirty minutes overtime each day until the matter was satisfactorily adjusted. (Employes' Exhibit "B".)

"Rule 30. Intermittent Service. Where service is intermittent, eight (8) hours' actual time on duty within a spread of twelve (12) hours shall constitute a day's work. Employes filling such positions shall be paid overtime for all time actually on duty or held for duty in excess of eight (8) hours from the time required to report for duty to the time of release within twelve (12) consecutive hours, and also for all time in excess of twelve (12) consecutive hours computed continuously from the time first required to report until final release. Time shall be counted as continuous service in all cases where the interval of release from duty does not exceed one (1) hour.

Exceptions to the foregoing paragraph shall be made for individual positions, when agreed to between the Management and duly accredited representatives of the employes. For such excepted positions the foregoing paragraph shall not apply.

* * * *

The issue before us involves the question as to whether the Agent's position falls under the Scope Rule of the Clerks' Agreement, as the Brotherhood contends, or was a subordinate official position, not covered by the Agreement, as Carrier contends. Admittedly it is not an "excepted" position.

The claim is for retroactive pay for the incumbent, Emmett Dixon, for the period from October 25, 1951, when the claim was filed, to March 10, 1953, when the position of Agent was terminated and the work assigned to employes covered by the Clerks' Agreement.

The Carrier has called to our attention the fact that no complaint was filed on this position for a period of more than four years. Thus the Brotherhood acquiesced in the practice. However, the Brotherhood contends that, since the position was not bulletined, it was overlooked. The violation was not detected until the checking of positions following the putting into effect of the 40-hour week and the negotiation of a new agreement. No claim is made for retroactive pay for the period prior to the filing of the claim. Award 4428.

The duties of the incumbent in the "Agent's" position indicate whether or not this position was in reality a Clerk's job or one primarily supervisory

in character. According to the employe who held the position throughout the period in question, he performed the following duties after the morning trains had left St. Paul:

"At the Commissary, make report of any errors, turn in any mail picked up at the Depot. Take the steward's bag to the a/c clerk, put up meal checks for the crew for the following day and see that there are checks enough in the cabinet, if not, must bring checks up in their correct serial numbers. Must see that checks are ordered so that there is constant supply on hand at all times. This takes until Noon and sometimes must hurry to finish by Noon."

The record is clear that such were the duties of the Agent. He was a Clerk before he was assigned to this position. He returned to a Clerk's position after the "Agent's" job was terminated. And he has continued to perform many of the same duties now that he is classified by the Carrier as a Clerk. Even while Dixon was the incumbent in the position here in question, Carrier reported to the Interstate Commerce Commission that he was a Group 7 employe and classed as a Clerk. This report was made under oath.

In view of this we must conclude that the position was more clerical than supervisory. The duties, the scale of pay, and the disposition of the work after the termination of this position, all indicate that this was a clerical position with no more supervisory authority than is exercised by many other employes in recognized clerical positions. The claim must be sustained.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1956.