

Award No. 7374
Docket No. CL-7606

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
Chesapeake District**

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

(a) That the Carrier violated and continues to violate the rules of the clerical agreement when it arbitrarily treated and continues to treat three (3) clerical positions located in the Service Manager's Office, Room 1214 Terminal Tower Building, Cleveland, Ohio, as being excepted positions, notwithstanding the fact that the agreement provides no authority for such exceptions, and

(b) That the three (3) positions involved shall now be classified, rated, advertised, and assigned in accordance with the terms of the clerical agreement, and that each and every employe in any way adversely affected by reason of the failure and refusal of the Carrier to properly apply the terms of the clerical agreement to the said positions, and employes entitled thereto, be compensated for any and all wage loss sustained or adverse effect retroactive to January 1, 1945.

EMPLOYEES' STATEMENT OF FACTS: "The Service Manager" for the C. & O. General Offices at Cleveland, Ohio, is located at Room 1214 of the Terminal Tower Building, and in order to show his duties we will quote from bulletin issued by the President on April 3, 1950, as follows:

"TO ALL CONCERNED:

Effective today, Mr. Lawrence C. Allen is appointed Service Manager, with the responsibility for rentals of office space in Cleveland, repair and maintenance of offices, moving and transfers, telephone and buzzer installations, and installation and maintenance of Water coolers.

"The operation of the local private branch telephone exchange, and pass matters, heretofore under the jurisdiction of Mr. E. M. Whanger, will be under the jurisdiction of this office, and Mr. Allen will be directly in charge.

The position of Chief Transportation Clerk is definitely a part of the immediate personal office force of the President, and the claim in this case with respect to such position should be denied.

Stenographer

The position of Stenographer involved in the instant case does the stenographic work (writing of letters, typing of telegrams, vouchers, etc.) for the Chief Transportation Clerk. This stenographic position is also assigned to do such stenographic and typing work for other phases of the President's operations as may be assigned.

As noted above in this brief, this Stenographer position is now in the course of moving to the 40th Floor, where the President's files and other office work is located, along with the Chief Transportation Clerk.

As has been shown in connection with the position of Chief Transportation Clerk, the work performed by this Stenographer position has never been performed by the rank and file employees, and has always been under Section (a) of Memorandum Agreement No. 1 or its predecessor rules.

The portion of this claim having to do with the Stenographer position should be denied on the same grounds as that of Chief Transportation Clerk; i. e., that the work is definitely a part of the immediate personal office force of the President.

CONCLUSIONS

1. The Carrier has shown that the position of **Office Assistant** is a bona fide official staff assistant, reportable under Div. 2 to the Interstate Commerce Commission, and is not a position coming under the scope rule of the clerical agreement.

2. The position of Chief Transportation Clerk is assigned to perform work which is a bona fide part and function of the President's office; that such position is, therefore, a bona fide clerical position in the immediate personal office force of the President as provided by Section (a) of Memorandum Agreement No. 1.

3. The position of Stenographer assigned to work with and perform stenographic work for the Chief Transportation Clerk and to do other work as may be assigned by the President's office, is a bona fide clerical position in the immediate personal office force of the President as provided by Section (a) of Memorandum Agreement No. 1.

4. As shown by the Carrier, the Board's function in this case with regard to position of **Office Assistant** (Item 1 of these conclusions) extends only to the question of whether such position is a position under the clerical agreement.

5. The claim in this case should be denied in its entirety.

All data submitted in this case have been discussed in conference or by correspondence with the Employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this dispute is whether or not the positions of Chief Transportation Clerk, Office Assistant, and Stenographer, located in the office of Service Manager at Cleveland, Ohio, are within the scope of the Clerks' Agreement. The issue as to the position of Office Assistant is whether or not it is a clerical position or an official staff assistant

as alleged by the Carrier. The positions of Chief Transportation Clerk and Stenographer are admittedly clerical positions but the Carrier contends they are excepted under the scope rule which excepts the immediate personal office force of the president. The scope rule also contains the following provision:

"Additional excepted positions may be added to those listed in Memorandum Agreement No. 1 only by agreement in writing between the proper officer and the General Chairman." Rule 1 (1), current Agreement.

The position of Office Assistant is not listed in Memorandum Agreement No. 1 and, consequently, if the position is clerical, it is within the Clerks' Agreement. The duties of the position charge the occupant with the responsibility of handling all building leases and office equipment, with instructions to devote all his time to office service functions and to report to the president. We think the negotiating of office leases and the procuring of office equipment is an executive function and not a clerical one. This is so even if the leases are required to be formally executed by superior officers to the Office Assistant. It is clearly a position requiring executive business acumen and a peculiar knowledge of the work required of him. We agree with the Carrier that the Office Assistant is not within the scope of the Clerks' Agreement. The duties he performs were removed from another excepted position, another indication of their non-clerical nature. The fact that his office is not in the same room or a room adjacent to that of the President is a fact to be considered but is not necessarily a controlling one. It does not control the situation as to the Office Assistant.

The position of Chief Transportation Clerk was established on April 1, 1953, and awarded to A. L. Blackard. The position of Assistant Chief Clerk in the President's office, held by Blackard, was abolished at the same time. The work of the position principally consists of making arrangements for movement of office and business cars based at Cleveland. This included the handling of details of clearances, switching and movement schedules of such cars, and the stocking of such cars with equipment, furnishings and food supplies. This was done under the direction of the Service Manager to whom he reported. Clearly the position was not a part of the immediate personal office force of the President. Not being within such exception it is within the Clerks' Agreement and we so hold.

The position of Stenographer includes the duties of writing letters, typing telegrams, vouchers, etc., for the Chief Transportation Clerk. The position is also assigned to do stenographic work for others as directed. We cannot agree that this position is executive in character and a part of the immediate office force of the President. It is not shown to have been a confidential position or one that performs other than rank and file work. Not being within any exception stated in the Agreement, it is within the Clerks' Agreement.

The claim will be sustained as to the Chief Transportation Clerk and Stenographer positions and denied as to the Office Assistant. Employees entitled to such positions will be compensated for wage loss sustained, retroactive to April 7, 1955, the date the claim was made specifying the positions involved in this dispute.

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 Agreement was violated as stated in the Opinion.

AWARD

Claim sustained in part and denied in part per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1956.