

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

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

(a) The Carrier violated the Clerks' Agreement dated August 2, 1945, particularly Scope Rule 1, when in the Hamilton Park Auditors Offices, Chicago, Illinois, they established positions of Assistant to Auditor Disbursements, Assistant to Auditor Car Service, and Assistant to Auditor Electronic Procedures, without complying with the Clerks' Agreement by establishing these positions as positions designated as being covered by the Scope Rule of the Clerks' Agreement.

(b) The Carrier shall, by appropriate order, designate such positions as Assistants to Auditors as positions covered by the Scope Rule of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: Rule 1, Section (c), page 23 of Agreement negotiated between this Carrier and the Brotherhood, dated August 2, 1945, reads as follows:

"(c)—Additional positions classified as (b-1) or (b-3) will not be established unless agreed to between the Carrier and the employees' representative. (This does not apply to offices or departments where entire force is designated as (b-1) or to traveling positions.)"

Under Rule 1, Section (b), page 21 of Agreement dated August 2, 1945, between this Carrier and the Brotherhood, we find the following:

**"GENERAL OFFICE HAMILTON PARK
Assistant General Auditor
Assistant to Assistant
General Auditor
(b-1)."**

The title of the position in this award is different from those under dispute in this claim but the principle is the same, for the really important part of the work of these positions goes far beyond the work ordinarily regarded as clerical.

For these reasons, the Carrier asks that this claim be denied.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Before January 1, 1949, Carrier had a position designated as Assistant to Assistant General Auditor at its General Office in Hamilton Park, Chicago, Illinois. This was a (b-1) position under the Scope Rule of the Clerks' Agreement. As of the above-mentioned date the above-titled position was abolished by Carrier.

Subsequently Carrier established at said location the three "Assistant to" positions involved in the instant claim: (1) as of April 1, 1949, Assistant to Auditor of Disbursements; (2) as of February 1, 1952, Assistant to Auditor Car Service Accounts; and (3) as of May 1, 1955, Assistant to Auditor of Electronic Procedures. None of these was made subject by Carrier to Section 2 of the Scope Rule of the Agreement, as (b-1) or as any other designation. The position of Assistant to Auditor Car Service Accounts was abolished as of August 1, 1953.

On April 8, 1952, the General Chairman wrote Carrier's Manager of Personnel (highest officer designated to handle disputes under the Agreement), stating that the first two of the three above-mentioned "Assistant to" positions should have been made (b-1) positions in view of the fact that the previously abolished position of Assistant to Assistant General Auditor had been so designated. On May 1, 1952, said Manager of Personnel replied that he could not agree because said "Assistant to" did no routine clerical work and, in the absence of their superiors, had full authority to act (as officials) in their places. On May 5, 1952, the General Chairman requested a conference before official decline by the Manager and appeal by the Chairman. On May 9, 1952, the Manager of Personnel wrote the General Chairman that a conference was not objected to. Conference did not take place until March 14, 1955. By letter the following day the Manager of Personnel officially declined the General Chairman's position.

On May 31, 1955, the Division Chairman wrote to the Assistant General Auditor, objecting to the creation, without negotiation, of the third of the above-mentioned "Assistant to" positions—Assistant to Auditor of Electronic Procedures. This protest was answered by the Assistant General Auditor on June 6, 1955, with a statement that the position was considered an official one not subject to negotiation. On June 13, 1955, the General Chairman wrote the Manager of Personnel, asking if he concurred in the decision of the Assistant General Auditor in respect to the above-mentioned position and stating that, if so, said position would be included with the other two when the issue was submitted to this Division. The Manager replied on June 15, 1955, that (1) the position of Assistant to Auditor Car Service Accounts had been abolished as of August 1, 1953; and (2) the position of Assistant to Auditor of Electronic Procedure involved purely research work not subject to the Agreement.

Following sending of notice on November 30, 1955, the Organization submitted to this Division an ex parte submission on the three afore-mentioned positions on December 30, 1955.

The Employees ask this Board to rule that the three positions mentioned above are covered by the Scope Rule of the Clerks' Agreement. Before this issue can be determined, the Board must decide whether the claim in respect to each position is properly before it.

As to the position of Assistant to Auditor Car Service Accounts, Carrier contends that, because said position was abolished in 1953, the issue in respect thereto is moot and requires no decision by this Board. The Board agrees and so rules.

As to the position of Assistant to Auditor of Electronic Procedures, established as of May 1, 1955, Carrier's representative (but not Carrier in the record of this case) contends that (1) this claim is subject to the procedural requirements of Section 1(b) of Article V of the so-called Chicago Agreement of August 21, 1954, which state in part that, when a claim is disallowed, the Carrier must be notified in writing, within 60 days of receipt of notice of disallowance, of the rejection of said decision; (2) although the Employees filed an appeal within 60 days, as required by said Agreement, they failed to send written notice of rejection; and (3) this claim is therefore barred.

The Board is compelled to agree with this contention, and the Board rules that the claim in respect to said position is barred. It is true that Carrier did not raise this point on the property or in the record. But all relevant provisions of all agreements to which the Parties are subject may and must be considered by this Board in determining a claim, whether or not one or more of said provisions was neglected by them on the property or in proceedings before the Board. There is no evidence that the Parties agreed to waive the above-mentioned requirement of the Chicago Agreement.

As to the position of Assistant to Auditor of Disbursements, established as of April 1, 1949, and not objected to by the Employees until April 8, 1952, Carrier's representative (but not Carrier in the record of this case) contends that the claim thereon should be barred under the doctrine of *laches*. The Board finds itself unable to agree with this contention. There is nothing in the Parties' Agreement (applicable to that period) nor in the amended Railway Labor Act itself which sets time limits on or defines stale claims. Because of this and because Carrier never raised this issue, the Board rules that the claim in respect to this position is not barred.

This ruling, however, does not mean that the Board will consider this claim on its merits. The Board finds that the question of whether the position of Assistant to Auditor of Disbursements is subject to the Scope Rule of the Agreement is a matter to be determined by Carrier, in the first instance, and, if Carrier is willing, by negotiation between the Parties, in the second instance; it is not a question for decision by this Board. The Board is without authority to include or exclude new positions under the Scope Rule of the Agreement.

The Employees argue that Rule 1, Section 2(c)—which says that "additional positions classified as (b-1) or (b-3) will not be established unless agreed to between the Carrier and the Employees' representative"—supports their position, and Carrier violated same. In the Board's opinion the quoted statement begs the instant question. Said language clearly implies that, if Carrier wishes to set up a new position as (b-1), same must be done by agreement with the Employees. It does not say that Carrier must wish to classify a new position, like the one here in question, as (b-1) and then negotiate.

In the light of all the above, the Board rules that (1) the claim in respect to Assistant to Auditor Car Service Accounts is moot, requiring no decision

here; (2) the claim in respect to Assistant to Auditor of Electronic Procedures is barred; and (3) the claim in respect to Assistant to Auditor of Disbursements is beyond the Board's authority and must therefore be dismissed.

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 claims are not properly before this Division.

AWARD

Claims disposed of as set forth in last paragraph of Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April, 1959.