

Award No. 9248
Docket No. CL-8840

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD, NORTHERN DISTRICT
(Formerly Michigan Central Railroad)**

STATEMENT OF CLAIM: It is the claim of the System Committee of the Brotherhood that:

(a) Carrier violated the Agreement between it and the Organization, effective July 1, 1922, on the Michigan Central Railroad, when on July 1, 1955, it abolished an excepted position of Cashier to Local Freight Office, Detroit, Michigan, and thereby removed the position and work from the scope of the Agreement by creating a position of Assistant Freight Agent-Cashier in another craft or class of employees, and

(b) The Carrier shall now be required to place all the duties assigned to the position under the Clerks' Agreement and to bulletin and assign the position in accordance therewith, and

(c) The employee under the Scope of the Clerks' Agreement who is assigned or promoted by virtue of this claim shall, as a penalty for the violation, be paid the amount of \$20.96 per day effective as of July 1, 1955, and each day thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties, effective July 1, 1922, and a recent Agreement that became effective January 1, 1956, which are on file with this Board and are considered a part of this Statement of Facts.

Rule 1, Exceptions (b), reads in part as follows:

"In addition to the above general exceptions, the following individual exceptions are made in each of the departments named: * * *

"Cashier to Local Freight Office, Detroit

Agent, a supervisory position not covered by the Clerks' Agreement. They hold that this Cashier's position was excepted from all the rules of the Clerks' Agreement except the Scope Rule. They do not substantiate that holding with anything other than their own statements. They do not show any good reason for this new holding after thirty-three years of unquestioned application. To the contrary, the Carrier has very definitely shown that the Cashier's position, here in dispute, is specifically excepted from all the rules of the Clerks' Agreement, as so clearly indicated by Article 1, Rule 1, Paragraph (b)—Exceptions, of the Clerks' Agreement.

The Employees' position in this case is something new, so to speak, not supported by the rule itself, or past application of the rule without dispute. It is based upon a false premise, to say the least.

In conclusion the Carrier has shown that in the instant case the Employees when handling and progressing this claim to your Board did not meet the requirements of the governing Time Limit Rule; that when the Carrier abolished the Cashier's position, a position excepted and exempt from all the rules of the Clerks' Agreement, without negotiation with the Employees, it merely exercised its prerogative in such matters; that in so doing it did not violate any rule of the Clerks' Agreement because none of the rules of that Agreement were applicable and accordingly, the rules cited by the Employees do not support the claim; and finally, that the claim is based upon a false premise. Such being the case the Carrier submits that the claim in its entirety is without merit of any kind and should be denied or dismissed.

All facts and arguments contained herein have been presented to the Employees by correspondence or orally in the handling of this case on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about July 1, 1955 the incumbent in the position of Cashier at the Carrier's local freight office in Detroit, Michigan retired. The position of Cashier was specifically excepted in the Agreement as a position not subject to the rules of the Agreement. At about the time the incumbent retired the Carrier announced that the position of Cashier was abolished and such duties of the position as continued would be performed by an Assistant Freight Agent, a position also excepted from the rules of the Clerk's Agreement. Within the time limits provided the Organization filed the above claim.

At the outset the Carrier contends we ought to dismiss this claim because, it argues, the claim is for an unnamed Claimant and therefore does not meet the requirements of the time limit rule in the Agreement. The time limit rule provides, among other things, that all claims or grievances must be presented in writing by or on behalf of the employee involved, and that the initial claim in this case did not name a particular Claimant. This procedural matter has been raised in a great number of decided cases. Some decisions hold that the claimants must be specifically named, while others hold that the claimants need not be specifically named so long as they are easily and clearly identifiable. We think this latter view more properly effectuates the spirit and intent of collectively bargained agreements as well as the purposes of the Railway Labor Act, as amended. We believe the Carrier's contention that this claim is not sufficiently specific to be considered is without merit.

The Organization argues that exemption is inclusion, or to state it another way, that the mere naming of an excepted position in the Agreement entitles the Organization to certain rights concerning that position. We note that the Agreement excludes, by name, the General Superintendent. Are we to infer that this exclusion gives to the Organization the right to advance its own candidate for General Superintendent when that position becomes vacant? This would appear to be a logical extension of the Organization's arguments in this case, and we do not believe the Agreement ever intended any such result. It is customary to exempt or exclude certain positions from the coverage of collectively bargained Agreements, and such exempt positions are usually supervisory, confidential or technical having the primary responsibility of performing management functions. The abolished Cashier's position and the existing Assistant Freight Agent positions are both excepted positions and not covered by the rules in the Agreement. Consequently, the instant claim must be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February, 1960.