

Award No. 11149

Docket No. CL-10750

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) The Carrier violated and continues to violate the Rules of the Clerks' Agreement at Tucson, Arizona, when effective February 1, 1957, it abolished the position of Stationmaster and concurrent therewith assigned the duties thereof to the Ticket Agent, an employe not covered by the Clerks' Agreement; and,

(b) That the involved work be restored to the scope and operation of the Clerks' Agreement; and,

(c) That Mr. Safford L. Freeman be compensated eight (8) hours at the rate of Stationmaster for February 1, 1957 and for each and every day and date thereafter until the Agreement violation is corrected.

EMPLOYEES' STATEMENT OF FACTS:

1. There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines) hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, which Agreement (hereinafter referred to as the Agreement) is on file with this Board and by reference thereto is hereby made a part of this dispute.

2. Since the inception of the first bargaining agreement between the parties, effective February 1, 1922, the Carrier has maintained various facilities at Tucson, Arizona. The Freight Station is located a short distance away from the Passenger Station and the employes at each respective location, rated and classified under the Agreement, perform regular assigned duties to meet the requirements of the Carrier.

this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective February 1, 1957, the position of Stationmaster at Tucson, Arizona, was abolished. The record shows that this position had been established pursuant to a letter agreement dated July 16, 1943, which among other things, excepted the position from certain rules of the Agreement, and that subsequently, by February 1, 1955, these exceptions were removed so that the position was brought within full coverage of the Agreement.

On this appeal, Petitioner does not contest the right of the Carrier to abolish the position of Stationmaster on proper notice. Petitioner contends that the Clerks' Agreement was violated by the action of the Carrier in assigning the work of the Stationmaster position, upon the abolishment of that position, to the Ticket Agent covered by the Telegraphers' Agreement, and claims that such duties should be restored to the scope and operation of the Clerks' Agreement with monetary compensation to the Claimant until the violation is corrected.

The Scope Rule of the relevant Agreement sets forth the class of employees covered thereby but does not specifically enumerate the work reserved to them. When a scope rule of an agreement is of such general nature, the right to the work must stem from tradition and historical practice; and the Petitioner has the burden of proof on such an issue. See Awards 7338, 10455, 10762.

Petitioner asserts that the work of the Stationmaster which existed at the time the position was abolished has been historically and traditionally assigned to and performed by employees classified and rated under the scope and operation of the Clerks' Agreement in that such work was assigned to and performed by the position of Chief Clerk-Cashier, subsequently reclassified to Chief Clerk, then assigned to the Stationmaster when that position was established and was performed by that position before and after that position was fully covered by the Agreement. Carrier asserts that the work for which the Stationmaster position had been established had disappeared, that the only work remaining at the time the position was abolished was general supervision of baggage room employees, red cap porters and janitors, that such work was insufficient for a full time position, that prior to 1932 such supervisory work was included in the duties of the Ticket Agent, and was assigned to the Freight Agent upon abolishment of the Ticket Agent position in 1932, that the Freight Agent retained such work when the Ticket Agent position was re-established in 1936, that upon establishment of the position of Stationmaster such work was assigned to that position with the duties for which the position was established, that when the latter duties of the Stationmaster disappeared and the position was accordingly abolished, the general supervisory work referred to was returned to the Ticket Agent from where it "originally flowed." Petitioner disputes these assertions of Carrier except insofar as they indicate that general supervision of baggage room employees, red cap porters and janitors was the work of and was performed by the Stationmaster.

Thus, the crucial questions here involve the work of the Stationmaster which existed at the time the position was abolished and whether that work and general supervision of baggage room employes, red cap porters and janitors were exclusively reserved to that position by reason of tradition, custom or historical practice. If the work was not so reserved, the Carrier was not barred from assigning it to another craft. See Awards 8755, 9344, 10014, 10104.

In support of its assertions that the work of the Stationmaster historically stemmed from the Chief Clerk-Cashier position, Petitioner cites Form C-21 Final issued as a result of an arbitration award, which became effective January 1, 1927. While Form C-21 Final classified and rated the position of Chief Clerk-Cashier, it does not to the extent shown in the record set for the duties or work of that position. Nor do Awards 6209 and 2940, cited by Petitioner, which concerned disputes between the parties here, the latter award involving the same Stationmaster position, shed any light on that question. Form C-21 Final and the awards relied on do not establish the work of the Stationmaster which Petitioner claims existed at the time the position was abolished or that general supervision of baggage room employes, red cap porters and janitors was traditionally and historically reserved to that position.

Petitioner also relies on two letters from the Claimant, letters from two clerks and a retired clerk, all of which are dated subsequent to Petitioner's original submission and were presented in its "Rebuttal Brief" filed at hearing. Carrier also presented for the first time as an attachment to its "Statement At Oral Hearing" filed at hearing a statement of the Freight Agent at Tucson, who had occupied the position of Ticket Agent, dated subsequent to Carrier's original submission. Such presentation of these letters and the statement of the Freight Agent was untimely under the requirements of Circular No. 1 of this Board. Award 9552. Nevertheless, it is noteworthy that the contents of these documents demonstrate the sharp conflict in the factual assertions of the parties.

Petitioner attacks the correctness of Carrier's assertions by quoting a portion of the "Position of Employes" submitted by the Telegraphers' Organization in Docket TE-190, Award 281, which dismissed a case between the Telegraphers' Organization and the Carrier here upon joint request, and by stating "We were not furnished with a copy of Carrier's rebuttal in Docket TE-190; however, understand that Carrier did not dispute the Organization's statement above quoted, . . ." However, reference to Docket TE-190 reveals that the Carrier did take exception to and disputed the statement of the Telegraphers' Organization relied on by the Petitioner.

At the panel discussion of this case, objection was made to any reference to or quotation from Docket TE-190 other than Petitioner's quotation from that docket. Considering that Petitioner quoted from the Telegraphers' submission in Docket TE-190 and stated that it understood that the Carrier did not dispute such quotation, without indicating any basis for such an understanding, the Board is obligated in the proper performance of its duties to consider Docket TE-190 which, under these circumstances, is the best evidence of whether the alleged admission was made in that docket.

Considered as a whole, the record reveals substantial and material conflicting factual assertions and that Petitioner has failed to sustain its

burden of proving the assertions upon which it seeks allowance of the claim.

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 evidence does not establish that Carrier violated the Agreement.

AWARD

Claim denied in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.