

Award No. 11810
Docket No. CL-11943

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, 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 the terms of the current Clerical Agreement when on January 15, 1959, it failed and refused to award the rank and file position of Chief Clerk to Trainmaster, A-6, rate \$23.38 per day to Mr. Lee Shepherd, who was the senior clerical employe making application for the position, and instead awarded the position to Mrs. Annabelle B. Heck, who is junior to Mr. Shepherd, and

(b) That as of January 16, 1959, the first day (working) after the improper award, Mr. Lee Shepherd be placed on the position of Chief Clerk to Trainmaster, A-6, at Handley, West Virginia, and

(c) That commencing on January 16, 1959, and for each day subsequent thereto, all employes, beginning with the initial claimant, Mr. Shepherd, and continuing through the senior cut-off employe and others standing for work at Handley, West Virginia, be compensated for any difference between what they did earn and what they would have earned had the position of Chief Clerk to Trainmaster A-6 not been improperly awarded.

EMPLOYEES' STATEMENT OF FACTS:

1. Prior to January 1, 1945 the position of Chief Clerk to Trainmaster at Handley, West Virginia, was among those "excepted" from the application of the Agreements in effect between the Carrier and its clerical, office, station and stores employes. One other position was located in the Trainmaster's Office, that of Stenographer-Clerk, fully covered by the Agreement. Effective with the effective date of Agreement No. 7, January 1, 1945, it was agreed that the position of Chief Clerk would be removed from the excepted status, and in Memorandum No. 14, Supplementary to Agreement No. 7, it was provided:

2. The Carrier properly showed in bulletin advertising the chief clerk vacancy that stenographic duties attached as a part of the position.
3. Even if stenographic work had not been required when Harrington occupied the job, there was no rule provision prohibiting assignment of such lower rated work to the higher rated chief clerk position.
4. Rules 44 and 47 govern when duties and responsibilities of a position change. These rules were followed in all respects in this case.
5. Claimant Shepherd has at no time contended he can do stenographic work. His claim is that the Carrier lacked right to assign such work to the chief clerk position.
6. Rules cited in support of the Shepherd claim are not applicable in the situation and do not take from the Carrier its right to assign work in accordance with the conditions, due regard being given to preservation of rates of pay as provided by the rules.
7. The claim should, therefore, be denied in its entirety.

The Carrier calls attention in closing to the basis of Section (c) of the claim in this case. It will be seen that claim is first made in favor of Shepherd for the difference between his own rate of pay and the chief clerk rate. Claim is then made for other employes, continuing through the senior cut-off employe and others standing for work at Handley, such employes to be compensated for any difference between what they did earn and what they would have earned.

Shepherd was not awarded the chief clerk position on the basis that he was not qualified to do the stenographic work. Hence, Shepherd's present position was not bulletined, and while the Carrier's position is still that there is no merit in Shepherd's claim, attention is called to the fact that other employes who might have been affected are not ascertainable because Shepherd's position has never been bulletined as a result of the awarding of the chief clerk position giving rise to this claim. More than 15 months have elapsed since the chief clerk position was awarded to Annabelle Heck, and several years may elapse between submission of this claim to the Adjustment Board and rendition of award, so that it would be impossible to determine at so late a time who would have been where, deaths, resignations, promotions, reductions, etc., having occurred in the normal course of events during such period.

Attention is called to this while the case is being docketed, in order to prevent the possibility of any controversy or confusion later.

All data contained in this submission have been submitted to the Employee Representatives in conference or by correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue is whether Carrier's addition of stenographic proficiency as a requirement for qualification as Chief Clerk to Train-

master at Handley, West Virginia, was arbitrary or capricious. We have considered the particular facts and circumstances pertinent to this claim, at the time and place involved, as shown by the record. The Employes have not sustained the burden of proving a violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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 25th day of October 1963.