

Award No. 13926

Docket No. CL-14691

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5512) that:

(1) The Carrier violated the terms of the current Clerks' Agreement beginning May 1, 1963 by permitting duties of General Bookkeeper-Accounting Department, a 2(e) position covered by all the rules of the current agreement except 8 and 16(a), to be absorbed and performed by Mr. Edmund E. White who holds a 2(d) position exempt from all the rules of the current Clerks' Agreement.

(2) Miss Dorothy Talcott shall be compensated the difference between \$109.91 per week (Assistant General Bookkeeper) and \$150.80 per week (General Bookkeeper-Accounting Department) for the following dates, and subsequent dates until the violation complained of is corrected:

May 9, 1963

May 13 through May 17, 1963

May 20 through May 24, 1963

May 27, 28, 29, 31, 1963

June 3 through June 7, 1963

June 10 through June 14, 1963

June 17 through June 21, 1963

June 24 through June 28, 1963

July 1, 2, 3, 5, 1963

July 8, 1963

EMPLOYES' STATEMENT OF FACTS: Mr. Edmund E. White held 2(e) position General Bookkeeper-Accounting Department, said position sub-

dated February 19, 1962. This agreement (Exhibit A) provided that within one (1) year, and after further discussion, the position of General Accountant would be negotiated to come under the provisions of Rule 2(d) of the agreement of December 1, 1942. The method of providing for the position of General Accountant to come under the provisions of Rule 2 (d) is subject to negotiations but not the fact that it would come under Rule 2 (d). At a conference on February 19, 1963 the representatives of the organization would not agree to permit the position of General Accountant to come under the provisions of Rule 2 (d). Because of the failure to successfully negotiate the method of changing the General Accountant's position in accordance with the agreement of February 19, 1962, the Carrier changed the title of the position of General Accountant to Assistant to the Comptroller. The rate of pay, duties or responsibilities of the position were not changed.

In the initial claim submitted, the Organization stated in their "Statement of Facts" that the Carrier changed Mr. White's (General Accountant) title and rate to 2(d) Chief Clerk. This statement is erroneous as Mr. White's title was changed to Assistant to the Vice President and Comptroller at the same rate he had as General Accountant. Discrepancies in titles from those listed under Rules 2 (d) and 2 (e) of the basic agreement has been common for many years and never protested by the Organization.

Mr. White did not absorb nor perform the duties of General Bookkeeper but continued on with the exact duties that he performed before the change of title. At no time did the claimant, Miss Talcott, perform any different, additional or irregular duties but did perform the exact same duties as those before the change of title.

Any discussion of the insurance coverage of Mr. White as transmitted in the General Chairman's letter of November 8, 1963 is not a proper part of this claim.

The Organization contends violation of:

- Rule 1 — Scope
- Rule 2(e) — Excepted Positions
- Rule 6 — Seniority Rights
- Rule 7 — Basis of Promotion, etc.
- Rule 39 — Rating Positions
- Rule 41 — Changing Rates
- Rule 66 — Mutual Agreements

The Organization has failed to show how or when these rules have been violated.

(Exhibits not reproduced.)

OPINION OF BOARD: In February, 1962, at least partly because of the imminent retirement of the incumbent Chief Clerk to Auditor, a fully exempt 2(d) position, Carrier and Employees negotiated several changes regarding positions in the Accounting Department. The agreements thus arrived at were reduced to writing and signed by representatives of each party on February 19, 1962. In the February 19th agreement, among other things: certain duties of the Chief Clerk position were assigned to other, but non-exempt, positions;

Carrier agreed to increase the rates of pay for those and other positions; and both parties agreed that within a year the parties would negotiate the position "General Accountant" to be a fully exempt 2(d) position under the basic Agreement. The record shows that the term "General Accountant" was used synonymously with the title General Bookkeeper.

Employees claim that Carrier violated the Agreement beginning May 1, 1963, by permitting White, who until that date had occupied the General Bookkeeper position as a covered 2(e) position, to continue to perform the duties of General Bookkeeper, even though on May 1, 1963, he was transferred by Carrier to a fully exempt 2(d) position.

In view of the provision of the February 19th agreement that by February 19, 1963, the General Bookkeeper position would be negotiated to become a fully exempt 2(d) position, it is not readily apparent how Carrier could violate the Agreement even if it had after February 19, 1963, moved White to the vacant fully exempt 2(d) Chief Clerk position and had assigned to him duties of the General Bookkeeper position: under the February 19th agreement by February 19, 1963, both positions were to be exempted from regulation by the rules of the Agreement. Employees argue, but without supplying any supporting evidence, that "Carrier completely changed the text of its' proposals made in conference February 19, 1962, when conference was held February 19, 1963 in that they the Carrier had no intention of filling 2(e) position . . ."; Employees argument in this regard is presumably: first, that the February 19th agreement was not an agreement, but a reduction to writing of Carrier's proposals; and, second, that Carrier, by announcing its refusal to comply with one of the terms of the February 19th agreement, relieved the Employees from their obligation to carry out the requirement that they negotiate the partially exempt 2(e) General Bookkeeper position occupied by White to become a fully exempt 2(d) position.

Examination of the text of the February 19th agreement leaves no doubt that it is an agreement and not simply a listing of Carrier proposals: not only is it headed: "AGREEMENT," but its introductory statement is: "At a conference held in Warwick, New York on February 19, 1962, the following items were agreed upon: . . ." If Employees believed that Carrier was not living up to its obligations under the February 19th agreement, Employees' proper recourse was not to renege on their obligations under the agreement, but to file and process a claim seeking to cure the violation by Carrier. In any event there is no evidence in the record to prove that the February 19th agreement was anything but a valid agreement which was not made any less valid by reason of the change alleged to have been made by Carrier.

While the record is not entirely clear as to precisely what happened to White between May 1, and July 15, 1963, it is clear that Carrier removed his name from the payroll list of those covered by the Agreement and added it to the "official" payroll as an employee fully exempt from the coverage of the Agreement and that during that period Carrier had him continue to perform the duties he had previously performed as General Bookkeeper. In light of the February 19th agreement, Carrier had the right to treat the General Bookkeeper position as fully exempt. We do not find that these actions of Carrier violated the Agreement; nor did we find any evidence in the record to justify the claim on behalf of Miss Talcott.

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 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 27th day of October 1965.