



Award No. 18558
Docket No. CL-18691

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

**UNION PACIFIC RAILROAD COMPANY
(South-Central District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6751) that:

1. The Carrier violated the several provisions of the current agreement on August 1, 1968 when it changed the hours of the Chief Clerk Position No. 822, a 1 (e) position, from 8:00 A. M. - 4:00 P. M. to 11:00 P. M. - 7:00 A. M. Thereafter, the Carrier created a new position of Assistant to Superintendent as an official position to be fully excepted from the Brotherhood's Agreement, effective August 1, 1968, and without the concurrence of the Organization; and

2. Subsequent to the date of August 1, 1968, the Carrier did, in effect, remove the normal assignment of schedule covered duties and supervision of the former 1 (e) Chief Clerk position which worked 8:00 A. M. - 4:00 P. M. daily, from the scope and operation of the Brotherhood's Agreement — and assigned this supervisory and directory work to the newly created position of Assistant to Superintendent outside the scope and operation of the Brotherhood Agreement; and

3. The Carrier shall now be required to reinstate the 8:00 A. M.-4:00 P. M. Chief Clerk position to the status of a fully schedule covered supervisory 1 (a) position at the established daily rate of \$29.036; and

4. The Carrier shall compensate Mr. J. A. Allen, a fully covered schedule supervisory employe with seniority date of August 13, 1935, one additional day's pay for August 1, 1968 and each day thereafter plus overtime rate for each Saturday and Sunday in line with established practices existing in Ogden for a good many years under which the Chief Clerk works his two rest days. This claim shall continue for each and every day subsequent to August 1, 1968 until the date the violation is corrected.

Between that time and August 1, 1968, a determination was made by the officers of the Union Pacific Railroad Company at Ogden that the position of Assistant to Superintendent should be reestablished to fill the need for more effective and adequate supervision at Ogden, and Mr. J. Parkinson was appointed thereto effective August 1, 1968. At the same time, it was determined that the starting time of the Chief Clerk position at the Yard Office should be changed in order to afford greater utilization of that position. Accordingly, on August 1, 1968, a clerical vacancy bulletin was issued in line with applicable bulletin rules of the Clerks Agreement to all employees, advertising a vacancy on position of Rule 1(e) Chief Clerk with hours 11:00 P. M. to 7:00 A. M. The duties remain the same, that is:

"Duties — Supervision of all yard office employees and other related duties."

On August 8, 1968, Clerk R. T. Vernieu was assigned thereto on the basis of his seniority and superior qualifications.

On September 27, 1968, a claim was filed with the Union Pacific Superintendent, R. O. Bills, at Ogden by Local Chairman L. C. Murdock, Clerks Organization, on behalf of J. A. Allen for one day's pay at the rate of \$29.036 for August 1, 1968, account alleged violation of the Agreement by the Carrier when it created the position of Assistant to Superintendent and allegedly removed all supervisory and other schedule covered work of the Chief Clerk position from the scope and operation of the Brotherhood's Agreement, to be performed by this newly appointed officer. A like claim is made for each and every day following August 1, 1968, including weekend overtime work and allowances for every weekend, until the date this claim is composed in line with Agreement provisions allegedly violated. A copy of that letter is attached as Carrier's Exhibit B. By letter of November 15, 1968, Superintendent Bills declined that claim (Carrier's Exhibit C). By letter of January 10, 1969, General Chairman F. A. Hallberg appealed the claim to Senior Assistant to Vice President F. C. Wood (Carrier's Exhibit D) who again denied the claim in a reply letter of January 16, 1969 (Carrier's Exhibit E). Subsequent correspondence is attached as Carrier's Exhibits F through J.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 1, 1920, the Union Pacific Railroad Co. and the Southern Pacific Co. agreed to establish The Ogden Union Railway and Depot Co. at Ogden as a switching terminal facility under the joint ownership and management of the two companies. With approval of the Interstate Commerce Commission, the two Railway Companies entered into negotiations with various labor organizations in an effort to reach agreements pertinent to accomplishing reorganization. An agreement was reached effective March 1, 1968 between the Railway Companies and the Organization herein whereby all former clerical employees of the OUR&D Co., by reason of transfer, became Clerical employees of either UP or SP, thereafter subject to the terms and conditions of applicable UP or SP Clerk's Agreements. On August 1, 1968, Carrier changed the hours of Chief Clerk Position No. 822, a 1 (e) position, from 8:00 A. M. - 4:00 P. M. to 11:00 P. M. to 7:00 A. M. Thereafter, Carrier created the new position of "Assistant to Superintendent." The newly created position worked the same hours as the Chief Clerk prior to the change of his (Chief Clerk's) hours. The Organization contends that the change in hours and the creation of the new position of "Assistant

to Superintendent" is a subterfuge for the reason that the new position entails all of the duties of the "Chief Clerk" prior to the time change in the hours of his (Chief Clerk's) position. Carrier maintains that the position of "Assistant to Superintendent" is a re-established position that had been in existence for more than 10 years without complaint. The Organization contends it is a new position not authorized by the Agreement between the parties. Carrier denies that the position in question involves the same duties as "Chief Clerk."

This Board finds that Carrier complied with Rule 7(c) of the Agreement when the change in hours was made for the "Chief Clerk" position. This Board also finds that no probative evidence upholding Claimant's contention that the duties of "Chief Clerk" were assumed by the new "Assistant to Superintendent." There is no doubt that some of the Chief Clerk's duties were assumed and performed by the Assistant to Superintendent from time to time; however, this in itself does not constitute a contractual violation. Carrier has the prerogative of assigning work in any manner not prohibited by the Agreement. See Awards 18012 (McGovern), 16217 (Ives), 16191 (Dugan) and others.

Giving credence to Carrier's position in this case are the facts that there are the same number of Chief Clerk and Assistant Chief Clerk Positions at the Yard Office as there were during the period before the claim was filed; and that there had in the past, for a period in excess of ten years, the position of Assistant Superintendent without objection by the Organization. This position (Assistant Superintendent) was abolished and reinstated less than one year later.

This Claim will be denied.

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 herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.

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