

SPECIAL BOARD OF ADJUSTMENT NO. 170

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
versus
ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) The Carrier violated the Rules of the Clerks' Agreement when on May 1, 1954, it created a position of Train Master's Clerk at Princeton, Kentucky, as excepted from Rules 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64. Also Rules 24, 25, 26 and 53 except in case of the occupant's dismissal from service.

(b) That Carrier shall now be required to bulletin position of Train Master's Clerk at Central City, Kentucky, subject to all the Rules of the existing Agreement.

(c) That Carrier shall compensate any and all employees affected for any wage loss sustained as a result of being deprived of promotional and seniority rights.

OPINION: It appears that the Carrier created a position of Trainmaster's Clerk at Princeton, Kentucky, without consulting with the System Committee of the Brotherhood. The position was first established at Princeton, Kentucky, on May 1, 1954. Prior to that date two trainmasters occupied offices above the passenger station at Princeton. Clerk Warren performed the clerical and secretarial duties required by both trainmasters. James Miller, an unassigned clerical employee having seniority rights on the Memphis Division but having no seniority rights on the Kentucky Division was assigned to the position on May 1, 1954.

It is the position of the System Committee that when the agreement was revised on February 1, 1954, several rules in addition to the Scope Rule were revised, and every position bearing an exception was listed among the exceptions. No provision to include exceptions for positions to be established in the future were incorporated in the rule, and that in the absence of any provision to the contrary, Rule 1 governs the hours of service and working conditions of the employees of clerical craft, and therefore, the additional Trainmaster's Clerk position established at Princeton, Kentucky, is subject to all the rules of the agreement.

It is the position of the Carrier that the current agreement does not restrict Carrier's right to establish positions excepted from full coverage of the rules agreement so long as such positions are of the same class and kind as positions listed in the Scope Rule as excepted.

We are of the opinion that the principle announced in Award No. 2940 governs

the issue in the case at bar. In that award it was said:

"It is true that the Agreement lists several specific Stationmasters' positions as being excepted from the scope of the Agreement. It must be borne in mind that the Agreement does not declare that all Stationmasters are excepted but proceeds to name those that are excepted. This evidences an intent that any positions of stationmaster subsequently established shall be under the Agreement unless they are also specifically excepted. By naming those excepted, all others must necessarily be considered included. Award 2009. We conclude therefore that the position of Stationmaster at Tucson was within the current Agreement except to the extent it was excepted therefrom by the letter agreement of July 16, 1943."

Award 6449:

"The Agreement, the addendum and the supplement limit the right of the Carrier to act unilaterally in the establishment of excepted positions.

"It is clear from the docket that Position No. 77 was established and given the special status of exception from Rules 27 and 28 by the Carrier's unilateral action. Such establishment is an attempt to extend the agreement beyond the specific limits fixed by the parties."

Had the Carrier desired to except similar positions to be established in the future from coverage of any rule of the agreement, such desire should have been expressed during negotiations and by agreement made a part of the rule. It is clear that the position of clerk to the Trainmaster at Princeton, Kentucky, was established and given the special status of excepted from the rules of the current agreement, except eleven by the Carrier's unilateral action.

We are of the opinion that the rules have been violated, and the claim should be sustained.

FINDINGS: The Special Board of Adjustment No. 170, 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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Special Board of Adjustment No. 170 has jurisdiction over the dispute involved herein; and

That the agreement was violated.

Award No. 1
Docket No. CL-7562

AWARD: Claim sustained.

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/s/ Edward M. Sharpe
Edward M. Sharpe -- Chairman

/s/ A. B. Simmons
A. B. Simmons - Employee Member

/s/ E. H. Hallmann
E. H. Hallmann - Carrier Member

Chicago, Illinois
February 21, 1957

SPECIAL BOARD OF ADJUSTMENT NO. 170

INTERPRETATION NO. 1 TO AWARD NO. 1
DOCKET NO. CL-7562

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Illinois Central Railroad Company

Upon application of the representatives of the organization involved in the above award, that this Board interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the above award it was held that the Carrier violated the Rules of the Clerks' Agreement when on May 1, 1954, it created a position of Train Master's Clerk at Princeton, Kentucky.

Instead of complying with the above award, the Carrier on March 13, 1957, bulletined Position No. 880, Clerk-Stenographer at Central City, Kentucky, with rate pay of \$16.24 per day, hours 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. with Saturday and Sunday as rest days. The bulletin required applicant to be qualified to take dictation in shorthand, type, drive an automobile, make trips out of town, and perform other clerical work as assigned. K. R. Wininger was the successful applicant for the position and was assigned thereto on March 18, 1957.

The Carrier contends that inasmuch as the former Train Master's Clerk position was established at variance with the Clerks' Agreement, the position was abolished, and a new position of Clerk-Stenographer was established to perform duties analogous to those performed by occupants of similar positions on the Kentucky Division, and that the rate of pay placed on the position of Clerk-Stenographer was the same as the rates of pay attaching to comparable positions on the Kentucky Division.

The Carrier also contends that the only employee on the Clerks' Seniority Roster No. 1 on the Kentucky Division that was adversely affected due to the Carrier's violative action in the instant case was Mr. K. R. Wininger, who was the successful applicant for the position of Clerk-Stenographer bulletined on March 13, 1957, and refuses to recognize that other employees in addition to Mr. Wininger were denied promotional and seniority rights resulting in other employees also sustaining wage losses due to the agreement violation.

Carrier has offered to compensate Mr. K. R. Wininger, the successful applicant for position of Clerk-Stenographer by assignment bulletin on March 18, 1957, by allowing the difference between what he earned from May 1, 1954, to March 18, 1957, and what he would have earned had he obtained the position of Train Master's Clerk by bulletin on May 1, 1954. Carrier contends no other

employees were adversely affected and refused to compensate other employees for wage losses suffered.

The Employees contend that in order for the Carrier to comply with Award No. 1 of Special Board of Adjustment No. 170, it must bulletin the position of Train Master's Clerk as such, subject to all rules of the Clerks' Agreement at the rate of pay attaching to the position on the date of the Award, subject to general rate adjustment. Instead of doing this, the Carrier abolished the position of Train Master's Clerk and concurrently therewith established a new position at a lower rate of pay with the same duties attaching to the newly established position that attached to the position of Train Master's Clerk prior to its abolishment.

The Employees contend that the Carrier has failed to provide evidence that there is any difference in the duties presently required of the occupant of the position of Clerk-Stenographer and the duties required of the occupant of the Train Master's Clerk position prior to the date of Award No. 1. The Employees maintain that the duties attaching to the position of Clerk-Stenographer are identical to those required of the occupants of other Train Master's Clerk positions on the same seniority district of the Kentucky Division which positions are located at Paducah, Princeton, and Louisville. Therefore, the position should be bulletined with the title of "Train Master's Clerk" at the rate of pay attaching to the position on the date of Award No. 1 of Special Board of Adjustment No. 170.

The Employees contend that in order for the Carrier to comply with that part of the Award dealing with the wage losses sustained by all employees account of being deprived of promotional and seniority rights the Carrier must make Mr. K. R. Winger whole by allowing him the difference between what he earned from May 1, 1954, to the date he is paid the proper rate of pay attaching to the position of "Train Master's Clerk" and what he would have earned had he been placed on the position of Train Master's Clerk on May 1, 1954, the date the violation began.

The Employees further contend that had Winger been assigned and placed on the position of Train Master's Clerk on May 1, 1954, a junior employee would have been used on each day Winger worked beginning on May 1, 1954, to the date Winger was assigned to the position of Clerk-Stenographer on March 18, 1957. Therefore, by the failure of the Carrier to comply with the Bulletin, Promotional and Seniority rules of the existing agreement in not assigning Winger to the position of Train Master's Clerk on May 1, 1954, a junior employee to Winger was denied the right to work on the dates Winger worked from May 1, 1954, to March 18, 1957, and therefore, any junior employee to Winger should be compensated for all wage losses sustained.

We are of the opinion that when the Carrier abolished the position of

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Train Master's Clerk and established a new position with the same duties attached to the newly established position as heretofore were required of the abolished position it violated the Rules of the Agreement. It follows that the Carrier shall bulletin the position of Train Master's Clerk subject to all of the Rules of the Agreement, and that the Carrier shall compensate all employees affected for any loss of wages sustained.

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/s/ Edw. M. Sharpe
Edward M. Sharpe -- Chairman

/s/ A. B. Simmons
A. B. Simmons -- Employee Member

/s/ E.H. Hallmann
E. H. Hallmann -- Carrier Member

Chicago, Illinois
January 17, 1958