

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
FORT WORTH AND DENVER CITY RAILWAY COMPANY**

DISPUTE.—

helper at Wellington, Texas, to that of clerk, effective October 1, 1933, to October helper at Wellington, Texas, to that of clerk, effective October 1, 1936, to October 24, 1933, and from December 2, 1933, forward."

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

The Carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Willard E. Hotchkiss was appointed as Referee to sit with the Division as a member thereof.

The following statement of facts is jointly certified by the parties, and the Third Division so finds:

"There is a position of station helper at Wellington, Texas. Employees allege that the duties of that position entitle the incumbent thereof to be classified and rated as a clerk under the definition of clerical worker contained in Rule 2-(a) of the Clerks' agreement, reading:

"Clerical Workers—Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports, and statements, handling of correspondence and similar work."

"During the period December 13 to 19, both inclusive, 1933, joint observation check was conducted by representatives of the Employees and the Carrier of the actual service performed on this position and they are in dispute as to the results of that check with respect to the division between clerk work and non-clerk work.

"Carrier holds that Rule 2-(a) does not sustain the claim."

An agreement exists between the parties bearing effective date of December 1, 1924, and in addition to Rule 2-(a), quoted in the joint statement of facts, the petitioner cites Rule 60 thereof, reading:

"Rates.—Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of this agreement."

Petitioner contends that the duties assigned to and performed by the incumbent of the position in question are practically all of a clerical nature and such that would entitle him to be classified and rated as a clerical worker under the provisions of Rule 2-(a). The petitioner also contends that effective December 2, 1933, the carrier abolished a position of Clerk and created a position classified as Station Helper and that the incumbent of the latter posi-

tion continued to perform relatively the same class of work, at a reduced rate of pay, as that performed by the employee previously classified as clerk, thereby violating Rule 60.

The petitioner further contends that the joint observation check covering the period December 12 to 19, both dates inclusive, 1933, referred to in the joint statement of facts and filed as Employees' Exhibit "A", proves that the position in question should properly be classified and rated as a clerical worker under the provisions of Rule 2-(a).

The carrier contends "that under the provisions of Rule 2-(a) of the Clerks' agreement, the position of station helper at Wellington, Texas, is in no sense whatever a clerk position and that the incumbent of that position does not regularly perform the required kind of work of sufficient degree to make it a clerk position, and this is proven by the results of the joint observation check conducted in the period of seven consecutive days, December 13 to 19, both inclusive, 1933." "On each day," carrier says, "the amount of clerk work was considerably less than four hours."

The carrier also contends that prior to October 24, 1933, the station force consisted of two employees, namely an agent-telegrapher, and a station helper; that on October 25, 1933, a cashier was employed because of seasonal business and that from that date to November 30, 1933, the force consisted of three employees, viz., an agent-telegrapher, a cashier and a station helper; that on December 1, 1933, the force was reduced to two employees, namely agent-telegrapher and station helper, and that Rule 60 of the agreement was not violated.

RECAPITULATION.—This case involves an employee apparently qualified to do clerical work who has been placed in a position of station helper. The petitioners claim this was done in violation of the agreement, while the carrier claims that it was incident to the depression and poor business. The parties have proceeded in an orderly and commendable way to make a check of the work performed for a period of one week, from December 13 to 19, 1933, inclusive. They are in agreement as to the work performed, but disagree as to whether a sufficiently large part of it was clerical to justify the claim.

The joint check is valuable insofar as it narrows the zone of dispute and gives at least a partial basis for an opinion concerning the items on which the parties disagree. Since it is largely a matter of judgment as to the degree to which particular activities are clerical or non-clerical, some disagreement is natural.

The record seems to show agreement that roughly one-third of the work was clerical and one-sixth non-clerical, leaving about one-half of the work in dispute. It is agreed that regular performance of four hours' clerical work a day entitles an employee to be rated as a clerk.

Petitioners have emphasized the fact that the rules do not require that work that has to do with the various records which have to be kept shall involve actual recording or calculating, but that it only needs to be incident thereto or similar work. They also point out that only such manual work as does not require clerical ability is excluded from the classification clerical, and they interpret the work in dispute as either being incident to keeping records or similar work, or as work requiring clerical ability. Petitioners also cite the population of Wellington and its increase of 81% from 1920 to 1930. Assuming that the growth has continued, they say that this fact shows the importance of the work to be done at the Wellington station.

The carrier says that the petitioners are in error in stating that the position in dispute carried a classification of clerk from October 24, 1933, to December 2, 1933, quoting the carrier's language:

"Prior to October 24, 1933, the station force consisted of two employees, namely an agent-telegrapher and a station helper on October 25, 1933, a cashier was employed because of seasonal business and from that date to November 30, 1933, or a period of about five weeks, the force consisted of three employees, namely an agent-telegrapher, a cashier and a station helper; on December 1, 1933, the force returned to two employees, namely agent-telegrapher and station helper."

Quoting further, the carrier says:

"Good evidence that the carrier in applying Rule 2 has done so correctly lies in the fact that of the classes of employees represented by the Brother-

hood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on this railway over 80% are classified and rated as clerk positions."

The carrier emphasizes the lack of business and depression as the reason why only a station helper and not a clerk is needed.

OPINION OF THE REFEREE.—The Referee is of the opinion that the claimant was spending regularly less than four hours a day on work which could rightly be classed as clerical during the period to which the joint check applied. In all the circumstances, the relatively small amount of business at the time the claim arose appears to have justified the carrier in continuing to employ a station helper at that time instead of a clerk.

This ruling, however, should not inhibit petitioners from requesting reclassification when, as, and if a different state of facts appears to justify such a request.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 18th day of September 1936.

