

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

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

DISPUTE.—

"Request of employes for reclassification and rerating of position of station helper at Claude, Texas, to that of clerk, effective October 1, 1933, to June 19, 1934, and from July 10, 1934, forward."

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

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 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 Claude, Texas. Employes 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.—Employes 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 11 to 17, 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), cited in the joint statement of facts, the petitioner cites Rule 60, 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."

The 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 entitle him to be classified and rated as a clerical worker under the provisions of Rule 2-(a).

The petitioner further states and contends that between June 19 and July 10, 1934, the position in question was properly classified and rated as a "clerk," rate \$4.00 per day; that effective July 10, 1934, the carrier abolished the posi-

tion of clerk and created a position classified as Station Helper, rate \$1.93 per day, upon which position the incumbent performed relatively the same class of work, with a lesser rate of pay, and that in so doing, the Carrier violated Rule 60.

The carrier particularly takes issue with the contention that Rule 60 has been violated and cites the following list of employees at the station at the periods indicated:

"March 8, 1930—Agent, 2 telegraphers, station helper.
 "January 9, 1931—Agent, 1 telegrapher, station helper.
 "June 29, 1931—Agent, 1 telegrapher, 1 clerk, station helper.
 "July 19, 1931—Agent, 1 telegrapher, station helper.
 "June 20, 1934—Agent, 1 telegrapher, 1 clerk.
 "July 10, 1934—Agent, 1 telegrapher, station helper."

Commenting on this table, the carrier says:

"Rule 60 of the Clerks' agreement was not and could not be violated. The position of station helper was in effect three and one-half years continuously prior to the opening date of the period embraced by this claim, namely October 1, 1933, and therefore it is proper to state that there was no established position discontinued and station helper position created in lieu thereof."

As to the position carrying a classification of clerk from June 19 to July 10, 1934, the carrier says:

"This was nothing more nor less than a change in force demanded by an increase in business of short duration and rather proves the fact that when there is necessity for a clerk one is employed."

Recapitulation.—The facts in this case are similar to those covered in Award 300, Docket CL-254.

As in that case, indications are that the claimant is qualified to do clerical work. Petitioners call attention to the fact that in the instant case there are several hours in the evening when the claimant was the only person on duty at the station. This case differs also from Docket CL-254 in that it is located on the main line in a town in which respondent is the only railway, whereas Wellington is located on a branch line at a point where the business is competitive. Petitioners also note the fact that Claude is a coupon and a telegraph station with fairly frequent trains both passenger and freight. However, the population of Claude in 1930 was 1,041 as against 3,570 for Wellington, the place involved in CL-254.

As in CL-254, a joint check has been made, resulting in agreement as to the duties actually performed by claimant. As in that case, the parties disagree in respect to a considerable proportion of the items as to whether the work is clerical or non-clerical. The following table shows the amount of work during the week covered by the check agreed to be clerical, the amount agreed to as non-clerical, and the amount in dispute:

	Clerical	Non-Clerical	Disputed
December 11.....	2' 46"	2' 50"	2' 24"
December 12.....	2' 50"	2' 26"	2' 44"
December 13.....	2' 47"	2' 43"	2' 25"
December 14.....	3' 22"	1' 38"	3' 14"
December 15.....	1' 56"	1' 51"	4' 13"
December 16.....	2' 13"	3' 15"	2' 57"
December 17 (Sunday).....	31"	55"	2' 03"
Total.....	16' 25"	15' 44"	20' 00"

From the above figures it will be seen that roughly thirty percent of the work is agreed to be clerical, about thirty percent non-clerical, with nearly forty percent in dispute.

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.

As in case CL-254, the amount of clerical work involving a considerable portion of the activities in dispute is a matter of judgment. One item which is more conspicuous in the employees' claim in this case than it was in CL-254 is the amount of time allocated to doing certain manual work around the station such as attending fires and picking up while watching the ticket window.

It is fairly obvious that if business at the ticket window were brisk the work of waiting on customers, selling tickets, looking up information, and dispensing it might make the occupation appear predominantly clerical; whereas, if there were very little business to be done at the ticket window it could scarcely be said that waiting on an occasional customer would give a clerical quality to all of the activity of the period covered.

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 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this Eighteenth day of September, 1936.