

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Frank M. Swacker, Referee

**PARTIES TO DISPUTE:**

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

**THE CHICAGO, ROCK ISLAND & PACIFIC  
RAILWAY COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

**STATEMENT OF CLAIM:** "Claim for reinstatement of position of Cashier, rate \$157.00 per month, El Reno, Okla., freight station, effective April 1st, 1936, and reimbursement of all employees for monetary loss sustained account discontinuing the rate of \$157.00 per month April 1st, 1936."

**STATEMENT OF FACTS:** The following statement of facts was jointly certified by the parties: "Effective April 1, 1936, position of Cashier, rate \$157.00 per month, in the freight office at El Reno, Oklahoma, was discontinued and the work formerly handled by that position assigned to the position of Chief Clerk. The work formerly handled by the Chief Clerk was distributed throughout the office approximately as indicated in Exhibit 'A' Joint Statement of Facts.

"This reduction in force and re-distribution of work was made without conference with the employees' representatives. Rule 69 of Agreement effective January 1, 1931, between the disputant parties reads as follows:

'RULE 69. ADJUSTMENT OF RATES. When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for that position will be properly adjusted, but established positions will not be discontinued and new ones created under different titles covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules.'

There is in evidence an agreement between the parties bearing effective date of January 1, 1931.

**POSITION OF EMPLOYES:** "Joint interpretation of the proper application of Rule 69, dated June 21st, 1933, reads as follows:

'It is mutually agreed that where there are two or more positions having the same hours of assignment, with the same classification and rates of pay, and a position of that classification is to be abolished, it shall be the one held by the junior employee, but where the duties of a particular position are discontinued, or so decreased in volume that the remaining duties must be reassigned, the right of the carrier to abolish such position is unquestioned. Where remaining duties are reassigned the positions affected will be handled in conference in conformity with Rule 69.'

most convenient to the telephone to answer it. It is true the telephone is located near the chief clerk's desk, and, quite naturally, he would answer more calls than anyone else, but it has always been, and still is the duty of any available employe to answer the telephone.

"Reference is also made in Exhibit 'A' to time charged for counter work. There has been no change in the method of meeting the public with the exception that if there is not anything out of the ordinary it is handled by the agent instead of the chief clerk. Prior to and subsequent to the consolidation, when a customer called at the counter he was waited on by the chief clerk, who ascertained what was wanted and then called the employe concerned, i. e., the rate clerk, claim clerk, or car clerk, to give the desired information. Under the present arrangement any employe in the office or the one most convenient meets the customer at the counter, ascertains what is desired and calls the proper party to complete the transaction.

"The answering of telephones and counter work did not change to any appreciable extent when the cashier's position was abolished and the chief clerk assumed the duties of the cashier, the chief clerk at the same time relinquishing some of his routine clerical duties.

"The position of cashier is not necessary in the El Reno freight house and there has been no violation of the clerks' agreement in abolishing that position and combining the work of the chief clerk and cashier, and in returning to lower rated positions the class of work which the rate of pay established for their positions contemplated would be handled. The claim of the employes should be denied."

**OPINION OF BOARD:** The Joint Statement of Facts and Joint Exhibit "A" thereof show that when the position of cashier was discontinued effective April 1, 1936, all of the work on that position was assigned to the chief clerk. The duties previously performed by the chief clerk were allocated as follows: counter and 'phone work, about one hour per day, assigned to rate clerk; counter and 'phone work, about one hour per day, and correspondence about thirty minutes per day, total one hour and thirty minutes, assigned to claim clerk; counter and 'phone work, about thirty minutes per day, assigned to car clerk; making grain bulletins, placing diversion orders and handling diversions on grain, average about two hours per day, daily tonnage report and various minor reports and statements, about fifty minutes per day, total two hours and fifty minutes, assigned to bill clerk. Balance of work, excepting about thirty minutes per day, which averaged over two hours daily, assigned to agent.

It will thus be seen that the average of approximately eight hours per day of work formerly performed by occupant of position of chief clerk was distributed to other employes in the office and the agent. About thirty minutes per day of work (on 'phone) formerly performed by the chief clerk remained on that position after April 1, 1936, and in addition to this position taking over all of the duties formerly performed by the cashier, the chief clerk also took over about thirty minutes per day of work previously performed on position of Bill Clerk.

The only logical assumption that can be drawn from the foregoing is that approximately seven hours per day of work formerly performed on the position of cashier, prior to April 1, 1936, remained to be performed subsequent thereto, and was assigned to the position of chief clerk. It does not seem reasonable that the carrier would remove substantially all of the work, previously performed on the position of chief clerk, from that position, unless there was an equal amount of work taken over by the occupant thereof from the former cashier's position which was discontinued.

Rule 69 and the agreed upon interpretation thereto provides that:

"Where the duties of a particular position are discontinued or so decreased in volume that the remaining duties must be reassigned, the

right of the carrier to abolish such position is unquestioned. Where remaining duties are reassigned the positions affected will be **handled in conference** in conformity with Rule 69." (Emphasis ours.)

This rule carries two very definite provisions; (a) that before a particular position may be abolished, the duties must have **decreased in substantial volume**, so as to permit of the reassigning of the remaining duties; and (b) when remaining duties are reassigned, the matter will be **handled in conference** in accordance with the provisions of the rule.

It is clear that what actually transpired was that the position formerly known as that of Chief Clerk was, in fact, abolished and the work thereof reassigned and that the title of the position of Cashier was merely changed to that of chief clerk. All this was done without conference with the Committee, a clear violation of Rules 66 and 69.

The Board is confronted with the difficulty of determining what remedy can be applied in cases of this kind involving arbitrary disregard of the rules. The claim is for the restoration of the position of Cashier and reimbursement of monetary losses sustained by other parties. The evidence seems to indicate that the former chief clerk displaced a claim clerk, remaining on position a short period of time, but it does not indicate what loss the claim clerk sustained.

It appears from the facts that the Carrier probably was warranted in discontinuing the position of chief clerk—not that of cashier—but, in view of the express requirements of the rules and interpretations thereof that reassignment of the remaining duties should be subject to conference, it is impossible to tell what would have been the outcome of such conference had it been held.

The clear intent of the rule is that, upon discontinuance of positions—concededly a prerogative of the carrier under the conditions specified in the rule—the positions affected by the reassignment of remaining duties should be handled in conference concurrently and not long after this Board shall have determined that the rule had not been complied with and at a time when circumstances are difficult of development.

Idle though it may seem the Board appears to have no alternative to bring about compliance with the rules, than to grant the claim as made.

**FINDINGS:** The Third Division of the Adjustment Board, 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 the employes involved in this dispute are respectively carrier and employes 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 Carrier violated the provisions of Rules 66 and 69 and interpretation thereto, as indicated in the Opinion above.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1938.