

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

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

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

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, on the Chicago, Rock Island and Pacific Railway, for restoration of the position of Roundhouse Clerk, rate \$134.70 per month, Haileyville, Okla., and reimbursement for any monetary loss sustained for all employees affected, retroactive to September 6th, 1939, date position was discontinued."

EMPLOYEES' STATEMENT OF FACTS: "On September 6th, 1939, position of Roundhouse Clerk, assigned hours 8:00 A. M. to 5:00 P. M., one hour for lunch, rate \$134.70 per month, Haileyville, Okla., was discontinued and routine clerical work formerly performed by the Roundhouse Clerk was turned over to the Roundhouse Foreman, a position and an employee not within the scope of the current Clerks' Agreement, to the extent of approximately three hours and thirty minutes per day. Other work formerly on the position of Roundhouse Clerk was turned over to the yard clerks to the extent of two hours and thirty-five minutes per day. The positions of yard clerk are assigned rates as follows:

\$150.00	per month
142.20	" "
134.70	" "

The specified time required to perform the clerical work turned over to the Roundhouse Foreman is predicated upon information developed at a check made by representatives of the company and representatives of the employees during the time the Roundhouse Clerk was assigned and performing these duties."

POSITION OF EMPLOYEES: "The employees contend the carrier has violated Rule 1, Scope, and Section (j) of Rule 1 of the Working Rules Agreement and has also disregarded the principles and precedents established by awards issued from this Division of the Board. Attention is directed to Awards Nos. 385, 386, 485, 609, 630, 631, 649, 736, 737, 751, 752 and 753. The employees contend that it is a violation of our Working Rules Agreement to arbitrarily remove work from a position covered by the scope of our Agreement and turn it over to the Roundhouse Foreman.

"The carrier understands that the employes are basing their claim wholly on the fact that clerical work to the extent of 3 hours and 10 minutes per day theretofore performed by the roundhouse clerk was assigned to the roundhouse foreman at Haileyville. The right of the carrier to discontinue a position of roundhouse clerk and assign some of the remaining clerical work from such a position to a roundhouse foreman has heretofore been conceded by the clerks' organization on this property, as is evidenced by Award No. 18, Docket No. CL-27 of your Board. The findings in Award No. 18, Docket CL-27 read in part:

'Complainant party does not dispute the right of the carrier to have assigned the clerical work from the position of engine dispatcher—roundhouse clerk to the roundhouse foreman at Topeka, Kansas. but the said agreement does not legalize the transfer of six or more hours per day clerical work from the position of engine dispatcher-roundhouse clerk in one seniority district to an official or so-called "excepted position" in another seniority district without negotiation between the parties in the interest of employes who may be affected.'

(Emphasis added.)

"The basis for the underscored portion of the above quotation was a statement made by general chairman McLean of the clerks' organization in the hearing before your Board of the case covered by Award No. 18, Docket CL-27. His statement was that if the general manager of the railway could perform all of the clerical work on the Rock Island the organization could have no objection to his doing so, and that likewise if the roundhouse foreman could perform all of the clerical work at Topeka they could not object to his doing so. Your Board accepted that statement from the employes' representative and recognized in the above quoted findings in that case that there was no legitimate claim because some of the clerical work was assigned to the roundhouse foreman. You did sustain the claim on another basis, i. e., that a certain amount of the clerical work remaining was assigned to an employe on another seniority district. There has been no change in the rules of the clerks' agreement since Award No. 18, Docket CL-27 was issued which would destroy the mutual understanding between this Board, the carrier and the employes' representative on this property, as set out in that award. Awards or decisions which have been rendered on other cases on this property or on other properties are valueless as a precedent to set aside so clear an agreement as to the rights of the carrier to abolish a position of roundhouse clerk and assign all of the remaining clerical work to a roundhouse foreman. In the instant case not all of the remaining clerical work from the position of roundhouse clerk was assigned to the roundhouse foreman, some of the work was given to other clerical employes in the same seniority district. The carrier cannot be said to have violated the agreement with the clerks' organization in the instant case when all it did was do what the clerks' representative had agreed was proper under similar circumstances.

"The carrier's action in the instant case did not violate the agreement nor did the carrier violate the understanding placed on the rules of the agreement by the general chairman, and the claim should be denied by the Board."

OPINION OF BOARD: It has been repeatedly held by this Board that work embraced within the scope of an agreement may not properly be removed from such agreement and assigned to employes not subject to its terms. The present record discloses that, when the position of Roundhouse Clerk was discontinued, at least three hours and ten minutes of the work this position had performed was assigned to the Roundhouse Foreman, a position not subject to the agreement. We are of the opinion that there has been shown a violation of the agreement within the meaning of Awards 385, 485, 609, 630, 631, 649, 736, 737, 751, 752, 753, 1122, 1209, and 1210. In the light of these later awards, Award No. 18 cannot control. Cf. Award 458. However, it is not the function of the Board, in cases of this character, to determine how the violation of the agreement should be removed. Cf. Awards

1125 and 1126. The carrier is directed to make reparation for its past violation, but is free to adopt any arrangement, within the rules of the agreement, which will remove that violation.

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 there is disclosed a violation of the Agreement.

AWARD

Claim sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.