

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Referee Richard F. Mitchell

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—EASTERN LINES**

STATEMENT OF CLAIM: "Claim of the Brotherhood that Management's action in abolishing position of Shop Timekeeper, Streator, Illinois, and assignment of routine clerical duties formerly attached to that position to employes without the scope and operation of the Clerks' Agreement violated the rules of said Agreement; and

"Claim that the position shall now be re-established, the last regularly assigned incumbent returned thereto and all employes affected fully compensated for all wage losses sustained as a result of such Agreement violation retroactive to May 3, 1938."

EMPLOYES' STATEMENT OF FACTS: "Prior to May 3, 1938, there existed and had existed for a long period of time an established clerical position titled Shop Timekeeper, daily rate of pay \$5.41, at Streator, Illinois. On the date mentioned the position was abolished and the duties thereof assigned to employes holding no rights under the Clerks' Agreement.

"The principal and preponderating duties assigned to the position and the approximate average amount of time devoted to each as of date of abolishment follows:

Check Enginemen's Register	40" Daily
Handle Enginemen's Trip Tickets (Book, Check, etc.)	30" "
Register Carmen on Clock Cards	30" "
Prepare Distribution of Labor Report	30" "
Render Report of Cars on Repair Tracks	30" "
Render Train Control Report	30" "
Render Overtime Reports	20" "
Maintain Pay Roll Record	20" "
Typing and Correspondence	2'00" "
Answer Telephone and Run Errands	30" "
Render Daily, Weekly and Monthly Fuel Reports	15" "
Daily Report of Cars on Hand	15" "
Maintain Daily Record of Water Treated	10" "
Miscellaneous Incidental Clerical Work	1'00" "
	8'00" "

"Being the only Mechanical Department clerical employe located at Streator, his entire time was devoted to strictly clerical and related work of the class customarily assigned to employes of this pay roll designation.

"Subsequent to May 3, 1938, the principal and preponderating duties which had theretofore governed the classification and rate of pay of the position were parceled out from under the scope and operation of the Clerks' Agreement and assigned to employes not subject to said Agreement. We are informed by the Carrier that certain small routine reports were

"The scope rule of the agreement, upon an alleged violation of which this claim is based, specifies the classes of employes subject to the Agreement; it does not specify the work which may properly be assigned to, or the duties which may properly be required of, these classes of employes. In point of fact, the employes here involved perform a great variety of services for the inclusion of which no express authority either exists or is required to exist. These services have developed in response to the exigencies of particular situations, and no reason appears why the duties prevailing at any given time should be deemed to be definitive. Reasonable flexibility in the administration of the railroad industry, except in so far as it is inhibited by law or restricted, expressly or by necessary implication, through agreement of the parties, is essential to the welfare of the employes as well as to that of the carriers. Unless thus limited, the managerial discretion of the carriers must be held to be controlling." (From Award 1078.)"

OPINION OF BOARD: This case came to the Board in the form of a joint submission. It is the contention of the Organization that prior to May 3, 1938 there existed and had existed for a long period of time an established clerical position, title, shop timekeeper, at Streator, Illinois, daily rate of pay \$5.41. On the date mentioned the position was abolished and the duties thereof assigned to employes holding no rights under the Clerks' Agreement.

In handling the case a dispute arose between the parties in regard to the volume of work performed by claimant prior to the time the position was abolished and also in regard to the volume of work assigned to employes not covered by the Clerks' Agreement.

On July 24, 25, 26, 1939, a joint check was made which revealed that the roundhouse foreman and coal chute foreman were performing a substantial amount of work formerly attached to the abolished position. It also developed that at the time the position was abolished there was a substantial amount of clerical work then performed by the claimant, the joint check showing there were three hours and three minutes of work per eight hour shift actually performed.

The Organization contends that in addition to the amount of the clerical work shown by the joint check of work performed by the roundhouse foreman and coal chute foreman, there is also considerable clerical work performed by the car inspector who is not under the Clerks' Agreement. It is the contention of the Carrier that the duties declined to the extent that a clerk was no longer needed to assist and perform those clerical duties and that the roundhouse foreman and the coal chute foreman could without assistance perform along with their other duties the necessary clerical work at this point.

So we are confronted with a case in which there was a substantial amount of work remaining to be done after the position was abolished. This Board has been confronted with similar cases presented by this same Carrier covering the identical current agreements involved in this case. The Referee has made an examination of the submissions in those cases and finds that the arguments in Awards 1254 and 1314 are very similar to the argument submitted in this case upon behalf of the Carrier to show why claim should be denied. The Carrier in its submission cites Award 637. We quote from its submission:

"The carrier is within its right in abolishing positions when the work has disappeared or substantially been reduced in volume."

The Carrier, however, fails to quote the very next sentence:

"The Board has repeatedly held that the Carrier cannot discontinue or abolish positions and assign the duties thereof to employes not covered by the agreement."

This Board has repeatedly held that while carriers are free under collective agreements to abolish clerical positions when the duties thereof have disappeared or substantially been reduced in volume, yet the Board has also consistently held that such duties as remain must be assigned to employees covered by the current Agreement and for whose benefit the Agreement is made. See Awards 385, 458, 637, 753, 1122, 1254, and 1314.

In the recent Award, No. 1254, with almost the same question involved as confronts us in this case and involving the same railroad and the same contract, this Board sustained the claim, stating:

"The essential facts in this claim are not in dispute. On May 10, 1938, the position identified as Roadmaster's Clerk at Brownwood, Texas was abolished. Some of the work of this position was transferred to Temple, Texas and a part of the work transferred to the two District Roadmasters at Brownwood, Texas. These two Roadmasters are not covered by the current agreement. Controversial contentions run only as to the volume of work transferred to the Roadmaster, and with respect to the right of the carrier to so remove the work arbitrarily. It is admitted that entirely apart from such routine clerical work as these two Roadmasters handled as a natural incident to their regular duties, a substantial amount of work previously performed by the clerk was transferred to them.

"In many awards this Board has held that while carriers are free to abolish positions when the majority of the duties do not remain to be performed thereon, it likewise consistently has held that the remaining duties must continue to be performed by employees within the scope of the applicable agreement, and that the remaining work cannot be turned over to employees without the agreement. (See Awards Numbers, 385, 458, 571, 609, 630, 631, 637, 751, 752, 753, 754, 791, 1122, 1209, and 1210.)"

It is true that there is a dissenting opinion to Award 1254 but in Award 1314, which was decided after Award 1254, to wit, the 8th day of January 1941, this Board was confronted again with almost the identical question as in this case, covering the same current Agreement with the same railroad, again sustained the claim of the employee. This record clearly shows that a substantial amount of clerical work after the abolishment of the position in question remained to be performed and that it was performed by employees not within the scope of the current Agreement. This, in view of the former awards of the Division, is a violation of the current Agreement. In this case the claimant asks for the restoration of the position. In Award 1314 this Board said:

"As to disposition: The violation of the agreement lay not in abolishing Position 225 but in giving some of its work to Moore. Hence we cannot decree the restoration of Position No. 225. The carrier may choose to continue the abolition of the position and make a legal distribution of the work in which case Cassidy has no claim thereafter.

"Although the carrier may abolish the position, when he wrongly distributes the work to employees not under the agreement, we can not speculate as to what it might have done if the distribution of work had not been taken out from under the agreement nor as to the consequences of such probable or possible action to the claimants. What is certain and not in the realm of speculation is that the work was wrongly taken out from under the agreement. Perhaps if this had not been done it would not have been possible to have abolished Position 225, or if the work could have been distributed among qualified included employees perhaps such employee might have taken a rating of \$6.15 per day and perhaps Lockhart might have been senior to such employee and could have displaced him, and that employee dis-

placed another and Cassidy still been furloughed. We cannot enter into all possible speculations as to what might have happened if the work had been properly distributed. If so the carrier might by saying it would have done a certain thing evade any consequences of its wrong action. We must treat the situation for the purposes of determining reparations as if Position 225 still existed."

It necessarily follows that we cannot now re-establish the position which was abolished but the claim is allowed from May 3, 1938 at the rate of \$5.41 per day, less such amount as claimant may have been making if and when he was returned to the service. Claimant is allowed the difference between \$5.41 and whatever he received from May 3, 1938 as long as what he received is less than \$5.41 per day.

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 employees involved in this dispute are respectively carrier and employees 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 was a violation of the Agreement in giving the work to an excepted position.

AWARD

The claim is sustained to the extent specified in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago Illinois, this 19th day of November, 1941.