

Award No. 1644
Docket No. CL-1591

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

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

EMPLOYES' STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that Carrier violated the rules of the Clerks' Agreement when on November 13, 1938, it abolished Position No. 500, Yard Clerk, rate \$5.19 per day, at Shopton, Iowa and assigned the duties of said position to Chief Clerk Minehart; and

"Claim that Position No. 500 shall now be reestablished, the last regular incumbent restored thereto and all employees involved in or affected by said violation of rules compensated in full for wage losses sustained, retroactive to November 13, 1938."

EMPLOYES' STATEMENT OF FACTS: "Effective with the completion of the day's work on November 12, 1938, Position No. 500 was abolished and the duties and responsibilities which constituted the essence or substance of the position were taken over by Chief Clerk Minehart, whose position is excepted from the Scope and operations of the Clerks' Agreement rules. Those duties consisted of:

Posting records	2'00" per day
Checking yard	1'00" per day
Checking trains	1'00" per day
Calling crews	1'00" per day
Keeping switchmen's time	0'30" per day"

CARRIER'S STATEMENT OF FACTS: "Effective October 26, 1938, Position No. 500, Yard Checker, Shopton, Iowa, maximum rate \$5.19 per day was established along with several other positions brought about by the necessity of increasing the regular force in order to properly handle a seasonal increase in business account of eastbound movement of grapes. Subsequently, when this seasonal increase in business had decreased, Position No. 500, yard checker, was abolished at the close of business on November 12, 1938."

POSITION OF EMPLOYES: "There is in evidence an agreement between the parties bearing effective date December 1, 1929, in which the following rules appear:

Article I,	Section 1
Article II,	Section 1-a
Article III,	Sections 1-a and 2
Article XII,	Section 6
Article XIII,	Section 15

ments and the right of employees subject to the scope and operations of the rules of each agreement to perform the work covered by their collective agreements with the Carriers. The Carrier feels that nothing is to be gained toward the settlement of this dispute in the matter of a detailed statement by the Carrier of the points involved in each of these awards. However, the rules governing the working conditions of clerical employees and employees excepted from the rules for clerical employees are not the same on all of the railroads of the United States. An examination of the various awards of the Third Division of the National Railroad Adjustment Board will show that not only are different rules in effect than on other railroads, but also that various side agreements have been consummated by the Clerks' Organization on and with individual railroads, covering phases of the working conditions which were not originally covered in the working Agreement as written. One should not accept an award on some particular point at issue which originated on a railroad which did not have the same rules as some other railroad on which a similar dispute has arisen. This is no doubt the situation which one would find in a careful examination of the Agreements with the various railroads which are involved in the awards which the Organization is now citing to support its contention in the instant dispute.

"In closing, the carrier would summarize its position as follows:

- "(1) When position No. 500 was abolished at Shopton no work remained from that position to be performed by or distributed to other employees.
- "(2) There is no rule in the agreement, no precedent, and no practice which prohibits the abolition of a clerical position when, in the judgment of the carrier, such abolition is necessary from the standpoint of a substantial decrease in the duties of an individual position, or a substantial decrease in the amount of work in a given office which would justify the abolition of a position and the redistribution of work in that office.
- "(3) That it would be impossible for the Board to hand down an award in the face of the conflict between the statements of the Carrier and the Organization as to the fundamental points at issue.
- "(4) That this claim was obviously submitted and prosecuted by the Organization, not on the basis of any rule, practice, or precedent, but in order to saddle the carrier with unneeded jobs and unnecessary expense."

OPINION OF BOARD: The Organization concedes that, under the stipulation of the parties dated July 17, 1940, the evidence is insufficient to sustain the claim. It asks, however, that the claim be dismissed rather than denied. The request is based upon the refusal of the Carrier to cooperate in making a timely check of the records. This complaint is well grounded. Until the suggestion was made, at the hearing before this Board, that a joint check be made the Carrier took the stand that the position had been abolished and that, therefore, there was no occasion to go into the records. In taking this stand the Carrier was in the wrong. A timely check of the records might have disclosed facts which the parties were unable to ascertain at the time the check was made in July 1941. See Award 1586.

Notwithstanding these considerations, however, we think that, under the universal practice of the Board in entering Findings upon which its awards are based, the decision in this case should take the usual course.

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 the evidence of record does not establish a violation of the agreement by the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1941.