

Award No. 1673
Docket No. CL-1619

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

SUGARLAND RAILWAY COMPANY

ASHERTON & GULF RAILWAY COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(a) The carrier violated the Clerks' Agreement when, effective with the close of business on September 30, 1940, it discontinued the position of Office Manager, salary \$325.00 per month, and assigned all of the duties to Mr. E. S. Banks, Assistant Auditor, an employe not covered by the Clerks' Agreement, also

(b) Claim for all losses sustained by all employes involved in or affected by this Agreement violation from October 1, 1940 until the violation is corrected."

JOINT STATEMENT OF FACTS: "At the close of business on September 30, 1940, the position of Office Manager, covered by the Clerks' Agreement, was discontinued and all of the duties assigned to an employe not covered by the Clerks' Agreement.

"Protest was filed with the carrier both before and after September 30, 1940."

POSITION OF EMPLOYES: "On September 30, 1940 the following rules were in effect and are applicable in this instant case:

Rule 1. Employes Affected

"These rules shall govern the hours of service and working conditions of the following employes, subject to the exceptions noted below:

(1) Clerks.

"Rule 76 prohibits the very thing the carrier did in this case. The carrier discontinued a position covered by the Agreement and turned over all of those duties to an employe not covered by the Agreement.

"The facts in this case are not in dispute. The carrier discontinued a position covered by the Agreement and assigned the work outside of the Agreement (See Exhibit A). The employes endeavored to prevent this Agreement violation (See Exhibits B and C), and have endeavored to correct it without success (See Exhibits D and E).

"Your Honorable Board has passed upon the subject involved in this dispute on numerous occasions and we attach hereto as Exhibit F, excerpts from several awards of this Board, all of which fully sustain the position of the employes in this case.

"The employes have shown that the position here in dispute was covered by the Clerks' Agreement and they have shown that the carrier arbitrarily discontinued this position and assigned its duties to an employe not covered by the Agreement, all of which is in violation of the Agreement and we ask that your Honorable Board sustain our claim."

POSITION OF CARRIER: "Employe assigned to the position of Office Manager in the Auditor's Office at Houston performed no clerical work whatever; his only duty being the supervision of all departments in the Auditor's Office.

"Prior to the establishment of the position of Office Manager, the supervision was handled by an employe with the title of Assistant to Auditor and when that position was changed to Assistant Auditor, the position of Office Manager, with only supervisory duties, was created. Effective October 1, 1940 the supervisory duties were again taken over by the Assistant Auditor which duties he had performed when he was acting as Assistant to the Auditor and it was not necessary to continue the position of Office Manager and the same was abolished.

"It is the contention of the Carrier that the discontinuance of the position of Office Manager in Auditor's Office at Houston is not a violation of agreement with Brotherhood of Railway Clerks."

OPINION OF BOARD: The facts in this case are not in dispute, they having been jointly certified to the Board by the parties. It is agreed that at the close of business, September 30, 1940, the position of office manager covered by the Clerks' Agreement was discontinued and all of the duties performed by the office manager assigned to an employe not covered by the Clerks' Agreement. The principal argument of the Carrier in defense of its conduct is that because only supervisory duties were assigned to this position, those supervisory duties having been previously assigned to the assistant auditor, Carrier was within its rights to discontinue the position in question and again return such supervisory duties to the position having previously performed them.

This Board has consistently held that it is a violation of the Clerks' collective Agreement to assign work within the scope of the agreement to employes holding excepted positions. See Awards 521, 523, 631, 637, 731, 751, 753, 754, 1209, 1254, 1300, and 1404. Nor may the Carrier arbitrarily take work which is under the current agreement and assign it to an excepted position. Such a prerogative would be destructive of the agreement. See Awards 631, 637, 736, and 751.

This record shows that the position which was abolished on September 30, 1940 was covered by the Clerks' Agreement and that all of the duties performed by that position were assigned to an employe not covered by the Clerks' Agreement. This is a clear violation of the current agreement.

What the General Chairman did on January 26, 1940 in connection with a proposal submitted to revise the then current agreement did not alter or change that agreement. The agreement then in effect was superseded by the present agreement which did not become effective until November 1, 1940, or a month after the violation here complained of occurred. The agreement in effect on September 30, 1940, having then been breached, carrier must make the employe or employes involved in or affected thereby whole for such 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 employe involved in this dispute are respectively carrier and employe 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 current agreement as contended by petitioners.

AWARD

Claim (a and b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1942.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 1673
DOCKET CL-1619**

**NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees**

**NAME OF CARRIER: Gulf Coast Lines, International-Great Northern Rail-
road Company, San Antonio, Uvalde & Gulf Railroad Company,
Sugarland Railway Company, Asherton & Gulf
Railway Company**

(Guy A. Thompson, Trustee)

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The claim in this case was for all losses sustained by all employes involved in or affected by this Agreement violation from October 1, 1940, until the violation is corrected. The award sustained the claim as made, which means that the employe affected should be paid until the violation is corrected.

Referee Richard F. Mitchell, who sat with the Division as a member when Award 1673 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: H. A. Johnson
Secretary**

Dated at Chicago, Illinois, this 9th day of December, 1942.