

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

John W. Yeager, Referee

**PARTIES TO DISPUTE:**

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

**COLUMBUS AND GREENVILLE RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate its agreement with this Brotherhood when on July 1, 1940, it discontinued position classified as Head Ticket Clerk in the Auditors Office, rate \$174.20 a month or \$6.8314 per day, and concurrently therewith removed the duties of said position from the Scope and operation of the Clerks' Agreement by assigning same to the individual handling of the Assistant Auditor of Passenger Accounts, who is also classified as Assistant General Passenger Agent, an official position, and that,

The said position of Head Ticket Clerk shall now be restored and assigned in accordance with the rules of said agreement, and that,

All employes involved in or affected by said violation of said agreement shall be reimbursed for all monetary losses sustained.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to July 1, 1940, the Carrier maintained in the Auditors Office a clerical position classified as Head Ticket Clerk and rated at \$174.20 a month, or \$6.8314 per day, in accordance with the working and wage agreements between the Carrier and this Brotherhood.

Effective July 1, 1940, after eighteen years of continuous existence, the Carrier abolished or discontinued said classified position while all of the duties thereof remained in existence. Concurrent with the discontinuation of said position the Carrier removed the duties thereof from the scope and operation of the Clerks' Agreement by requiring the Assistant Auditor of Passenger Accounts, Mr. A. E. Herring, an official and newly created title, to perform the duties formerly performed by the Head Ticket Clerk.

Prior to the discontinuation of said position of Head Ticket Clerk the incumbent thereof was Mr. H. M. Wood with a Seniority date of May 7, 1923. The Position of Assistant Auditor of Passenger Accounts, to which all the duties of former position of Head Ticket Clerk were assigned, is occupied by Mr. A. E. Herring, who is also classified as Assistant General Passenger Agent, and is on the Clerks' Roster as of July 1, 1922.

Protest against the actions of the Carrier herein cited were duly made and claim filed for re-establishment of said position of Head Ticket Clerk and that employes affected by the Carrier's actions be reimbursed for wage losses suffered. The Carrier has declined such protest and claim and has further declined to jointly submit this dispute to your Board.

The System Committee, through the General Chairman, has charged that Rule 76 of the agreement has been violated. This rule reads as follows:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

Manifestly, this rule has not been violated either as to rate of pay or application of the rules as no new position was created when the position of Head Ticket Clerk was abolished.

The carrier maintains that it has the right to make a reduction in clerical forces when such reduction is justified by a decline in volume of business, the necessity for economy, or otherwise, and that such right is clearly established by Rule 20 of the agreement, which, in paragraph (B), outlines the method for effecting these reductions, which is as follows:

"(B) In reducing forces the lowest rated position in the office or department where the reduction occurs will be abolished provided the efficiency of that office would not be impaired by so doing."

**OPINION OF BOARD:** This is a claim by the System Committee of the Brotherhood that the Columbus and Greenville Railway Company, carrier, in violation of the existing Clerks' Agreement, discontinued at Columbus, Mississippi the position classified as Head Ticket Clerk in the Auditor's Office and removed the duties of the position from the scope of the Agreement by assigning them to the Assistant Auditor of Passenger Accounts, an official position not covered by the Agreement. The Committee asks that the position be restored with reparation for loss sustained.

Prior to May 20, 1940 the passenger business at this point was handled in two departments. Traffic matters such as tariffs, arrangement of movements and public relations were handled by an official known as Assistant General Passenger Agent. Accounting matters such as auditing, interline settlements, journal entries and statistical reports were handled in an Auditors Office. In the Auditors Office was the position of Head Ticket Clerk, covered by the Clerks' Agreement. Apparently this clerk performed all of the duties assigned to this department.

On May 20, 1940 the two departments were combined and placed in charge of an Assistant Auditor of Passenger Accounts, an official position. The position of Assistant Passenger Agent appears to have been discontinued. The combination of departments, according to the carrier, was made necessary by decrease in business. The position of Head Ticket Clerk was carried into the combined department and was continued to July 1, 1940 when it was abolished by the carrier. After July 1, 1940 all of the duties of the combined department were performed by the Assistant Auditor of Passenger Accounts including those which had been previously performed by the Head Ticket Clerk.

On these facts the claimant asserts that the rules have been violated. Several rules are cited but the one requiring first consideration, there being no question that the position of Head Ticket Clerk is covered by the Agreement, is rule 76, which is as follows:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

It is clear that this rule is a restriction upon creating new positions covered or not covered by the Clerks' Agreement.

No new position was established coincident with the abolishment of the position of Head Ticket Clerk. The official position of Assistant Auditor of Passenger Accounts was established more than a month earlier. On the

record here we cannot say that this was done for the purpose of evading the application of the rules. On a strict interpretation this finding would dispose of this claim, but an examination of the decisions shows that strict interpretations have not been a policy of this Division, hence the former rulings will be adhered to to the extent it is conscientiously possible to do so.

In Award 731 this Division, through its Referee, said in part, in dealing with a somewhat similar situation:

"The position of Assistant Freight Agent attached to the agency, at Paducah. The position having been incorporated in the Agreement, became just as permanent as that of Agent would have become had it been incorporated therein and cannot be abolished as long as the agency is maintained \* \* \*"

This pronouncement has been followed in succeeding decisions, but to the mind and understanding of this Referee it is not a statement of either sound principle or of a rule for practical guidance.

Clearly this would be a proper statement of principle in application of the letter of the rule under consideration, if limited to the subject of transfer or parcelling of duties, but to apply it to a situation such as this one seems unwarranted and improper.

In sound reason it cannot be said that where the duties of a position no longer exist, or where there is an official charged primarily with the performance of the duties of a department, and under a collective bargaining agreement such as we are considering here a position has been established to assist in the department, and later such position is abolished because the department head is able to and is, without bad faith on the part of the carrier, performing all of the duties, such abolishment is made in violation of the agreement.

To this extent in this opinion this Referee departs from the precedents of the former decisions of this Division.

The claim should be denied.

**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 claim has not been sustained.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 16th day of June, 1942.