

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that Carrier violated and continues to violate the rules of the Clerks' Agreement when on an undetermined date in August, 1937, it abolished an established clerical position at Grants, New Mexico, titled General Clerk, and concurrently therewith assigned the principal and preponderating duties of the abolished position to an employe not covered by the Clerks' Agreement, an Apprentice Operator; and,

(2) Claim that a clerical position, properly classified and rated, shall now be established at Grants, New Mexico, bulletined and assigned in accordance with the rules of the Agreement; and,

(3) Claim that all employes involved in or affected by said violation of rules shall be compensated for all monetary losses sustained as result of said violation, retroactive to August, 1937.

EMPLOYES' STATEMENT OF FACTS: Prior to the month of August, 1937, the station force at Grants, New Mexico, was as follows:

	Hours	Rate
Agent-Operator	8:00 A. M. to 4:00 P. M.	\$.86 per hour
Operator	4:00 P. M. to 12:00 Mid.	.74 " "
Operator	12:00 Mid. to 8:00 A. M.	.74 " "
General Clerk	8:00 A. M. to 5:00 P. M.	5.01 per day

(Rates quoted do not include increases of five cents per hour effective August 1, 1937, and nine cents per hour granted, effective September 1, 1941, and one cent per hour granted, effective December 1, 1941.)

The General Clerk's assignment included the following duties:

Checking yards.
Preparing 88 and 89 reports.
Receiving, delivering and checking freight and express.
Rating express and billing freight.
Selling tickets.
Delivering Western Union telegrams.
Filing station records.
Working mail, baggage and express on passenger trains.
Janitor work (Cleaning office and waiting room).

Concurrently with the abolishment of the position in dispute, an Apprentice Operator was assigned to the station and took over the duties formerly performed by the General Clerk.

entitled to a position that should have been established effective December 30, 1937 under the applicable rules of the Agreement effective December 1, 1929 and for whom a monetary loss can be proven to October 11, 1938.

The claim is for the **establishment now of a clerical position** and for reimbursement of monetary losses alleged to have been sustained by unidentified parties in un-named amounts. The claim is **not** for the **re-establishment** of position of General Clerk, it being admitted by the Organization, as disclosed by Item 2 of its "Statement of Claim" that such a position ceased to exist December 30, 1937.

It is not claimed that the employee displaced from the General Clerk's position abolished on October 11, 1938 sustained any monetary loss.

POSITION OF CARRIER: The claim for monetary loss should be dismissed, in the light of the fact that the employees have rejected the Carrier's offer to comply with the applicable terms of the Agreement on the basis that there should have been established December 30, 1937, effective upon the abolishment of the General Clerk's position, and terminating October 11, 1938, a proper position under the terms of the Agreement, and an employee eligible therefor placed thereon, which is all that the provisions of the Agreement between the parties require. Moreover, because the employees have both declined and failed to name any party having rights under the Agreement to an appropriate position and, also, have failed to show that any employee having rights under the Agreement has sustained a monetary loss by reason of the Carrier's admitted failure to comply with the applicable rules of the Agreement, no valid Award calling for the payment of money can issue unless the employees for whose benefit it is made are specifically named. See Award 906. Any Award that issues should require that a claim for monetary payment must, in order to be enforced, show that the names of the parties for whom claim is filed were made known to the Carrier prior to the filing of the claim with the Board.

The Carrier has not been served with nor permitted to see a copy of the Employees' submission, consequently it is not informed with respect to the alleged facts, contentions or allegations which the Employees' ex parte submission may contain. The Carrier, therefore, has dealt only with those contentions and allegations presented to it by the Employees and such other matters as in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to present evidence in rebuttal of any allegations, facts, or contentions that may be made by the Employees in their ex parte submission or to any other submission which the Employees may make to your honorable Board in this case.

OPINION OF BOARD: As of December 30, 1937, Carrier discontinued the position of General Clerk at Grants, New Mexico, and, concurrently, assigned a considerable part of the duties theretofore performed by that employee to an Apprentice Operator, not covered by the applicable Agreement of December 1, 1929. The Carrier admits that 3 hours 45 minutes per day of such duties were so reassigned, but says only 2 hours 45 minutes thereof were clerical in nature. It relies on Article 2, Section 1 (a) of the Agreement, which provides, in effect, that Clerks need not be maintained when less than four hours per day of clerical work is performed. Carrier offers to compensate some non-clerical employee at the applicable rate from December 30, 1937 to October 11, 1938, on which last mentioned date the position of Apprentice Operator was abolished.

It appears to be well settled by awards of this Board, construing the Agreement here before us, "that while carriers are free to abolish positions when the majority of the duties do not remain to be performed therein, it likewise (has been) consistently held that the remaining duties must continue to be performed by employees within the scope of the applicable agreement, and the remaining work cannot be turned over to employees without this

agreement." See Awards 2051 and 1254 and awards cited therein. Consequently, the Carrier violated the Agreement by conferring upon the Apprentice Operator, who was not within the Agreement, clerical duties previously performed by the General Clerk.

The question remains as to the remedy to be applied. The record discloses that prior to the time the position of General Clerk was discontinued that employee had a full assignment of 8 hours' work per day. While some of his duties may have been subject to assignment to other employees, the Carrier, having conferred them upon a General Clerk, is hardly in position to say that such duties were not within the scope of the Agreement. From this it follows that by distributing his duties amongst other employees, some of whom were without the Agreement, the Carrier destroyed the position occupied by a General Clerk who had a full complement of duties. This is not permitted. It has been said that such a practice would completely nullify the Agreement. See Award 607.

Under this situation this Board will not speculate as to what economies the Carrier might have effected had there been an authorized redistribution of the General Clerk's duties. On the contrary, the Carrier will be required to make the affected employees whole, as if there had been no violation of the Agreement. Awards 1314 and 2282.

There is no point in the proposition that those who would benefit by the sustaining of this claim are not named therein. Their identity and rights can be determined from a check of the Carrier's records. See Interpretation No. 1 (Serial No. 28) to Award 1421. Award 906, cited by the Carrier, properly restricted the relief granted therein to the named employees whose claims had been the subject of conference. That award is not applicable here.

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 Carrier violated the Agreement.

AWARD

Claim sustained, effective December 30, 1937.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1944.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Interpretation No. 1 to Award No. 2569

Docket CL-2387

NAME OF ORGANIZATION:

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

NAME OF CARRIER:

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

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, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

We have been asked to say, by way of an Interpretation of Award No. 2569, whether the penalties assessed by said Award terminated as of October 11, 1938, when the Carrier assigned to an employee under the Telegraphers' Schedule certain duties that had previously, on December 30, 1937, been taken from a General Clerk and given to the **Apprentice Operator** not under the Clerks' Agreement; or whether, by virtue of said Award, said penalties should be imposed until August 30, 1941, when the abolished clerical position was re-established.

The Carrier contends that the scope of the inquiry resolved by said Award was limited by Item 1 of the claim and the submissions of the parties to the issue as to whether it was a violation of the Agreement to abolish the clerical position and assign a part of the duties thereof to the **Apprentice Operator** not covered by the Agreement. It is argued on behalf of the Carrier that, under the circumstances of this case, it was no violation of the Agreement to assign the duties with which we were properly concerned when the Award was written, to a Telegrapher, but that, in any event, that question was not before this Board for determination under original submission.

On the other hand, the Petitioner relies upon Items 2 and 3 of the Claim and the broad and unrestricted language of the Award and also calls attention to the fact that the re-establishment of the clerical position on August 30, 1941, occurred long prior to the original submission.

We regard Item 1 of the Claim as reciting its factual basis and Items 2 and 3 as merely asserting the relief that the Petitioner deemed to be proper under such facts. So considered, the Claim should properly be construed to be limited, in point of time, as beginning with the violation of the Agreement that occurred when the Carrier, on December 30, 1937, assigned clerical duties to the **Apprentice Operator**, and as necessarily ending on October 11, 1938, when that position was discontinued and the work assigned to a Telegrapher. There

is nothing specific in the claim to indicate that it sought redress for any conduct of the Carrier subsequent to the time when the conduct complained of terminated; and a careful examination of the record fails to satisfy us that there were any negotiations between the parties prior to the submission, as regards any claim arising out of this controversy, other than that bounded by December 30, 1937 and October 11, 1938, when the work in dispute was performed by an **Apprentice Operator**. Under these circumstances, what was said in the Award must be considered and applied in the light of the issues that were before us when it was written.

This Board must assume the responsibility of being the judge of its own jurisdiction. It has consistently adhered to the established rule that parties must make a good faith effort to settle their differences before resorting to this agency. We hold, therefore, that Award No. 2569 has no application to that part of the present controversy which accrued on and after October 11, 1938 and which ended on August 30, 1941, when the clerical position was admittedly restored. If the parties cannot reconcile those differences on the property they may, without prejudice to their rights, come again to this Board.

Referee Curtis G. Shake, who sat with the Division as a Member when Award No. 2569 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 21st day of November, 1946.