

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When effective January 20, 1946, it abolished full time eight-hour Ticket Clerk position occupied by Miss T. P. Harrison at Warren, Ohio, and assigned the duties thereof to the Ticket Agent, an employee not covered by the rules of the Clerks' Agreement or any other agreement, and

(2) That Carrier shall now be required to re-establish the position of Ticket Clerk at Warren, Ohio, and restore Miss Harrison to said position, and

(3) That Miss Harrison and all other employees affected be reimbursed for wage loss sustained, retroactive to January 20, 1946.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 20, 1946, there was employed at Warren, Ohio, Ticket Office, in addition to the Ticket Agent, four Ticket Clerks as follows:

One Ticket Clerk	Hours—	8:00 A. M.	to	4:00 P. M.
" " "	"	—12:30 P. M.	to	8:30 P. M.
" " "	"	—4:00 P. M.	to	12:00 Midnight
" " "	"	—12:00 Midnight	to	8:00 A. M.

On and after January 20, 1946, the force at Warren Ticket Office, in addition to the Ticket Agent was as follows:

One Ticket Clerk	Hours—	8:00 A. M.	to	4:00 P. M.
" " "	"	—4:00 P. M.	to	12:00 Midnight
" " "	"	—12:00 Midnight	to	8:00 A. M.

The remaining work of the abolished position was assigned to the Ticket Agent, so that the Agent now handles pullman reservations, sells tickets, and performs other clerical work previously performed by T. P. Harrison, Ticket Clerk.

POSITION OF EMPLOYEES: There is in effect between the parties, an agreement bearing effective date of December 1, 1943, amended July 1, 1945, which contains the following rules:

Rule 1 (Scope) reads as follows:

"(a) These rules shall constitute an agreement between the Erie Railroad Company and its clerical, office, station and store-

and no more. Consequently, the assignment of such duties of the Round House Clerk position to the Round House Foreman is not in violation of the Agreement. The same rule applies as to the Lead Car Inspector in the present case."

"We conclude that the Carrier could properly abolish the position of Round House Clerk, that the return of the remaining work of that position to the Round House Foreman and the Lead Car Inspector which was incidental to those positions was entirely proper."

Many other awards support carrier's position including 615, 635, 806, 931, 1554, 1694, 2334, 2685, 3003 and 3221.

6. Employes of other classes and crafts do clerical work. This is specifically covered in Rule 1(e) of Clerks' Agreement 12/1/43, page 2. No rule has been negotiated to give clerks exclusive right to do all clerical work.

7. The only question to be decided is whether or not Ticket Agent at Warren, Ohio, may continue to sell tickets, answer telephones, make contacts at ticket window, and such other clerical work that is attached to his primary duties as Ticket Agent. Agents have always done such work and no rule has been negotiated to nullify or change this practice.

OPINION OF BOARD: Prior to December 1942, the force at Warren, Ohio, passenger station consisted of the Ticket Agent and three Ticket Clerks who each worked eight hours. With the increase of traffic during the war two additional Ticket Clerks were added. As traffic declined following the end of the war the two positions created because of heavy traffic were abolished. One of these positions was abolished September 1, 1945, and the hours of the other of these two positions were from 12:30 P. M. to 8:30 P. M. On January 20, 1946, the second position was abolished and the force reverted to the status of December 1942, which was one Ticket Agent and three Ticket Clerks.

The Petitioner contends that with the abolishment of the second position on January 20, 1946, the work which the incumbent of that position was performing was assigned to the Ticket Agent, a position not covered by the Agreement. The Petitioner further contends that assigning this work to the Ticket Agent was in violation of the current Agreement. We will consider these two contentions of the Petitioner in the inverse order of which they are stated.

The position abolished on January 20, 1946, was in existence when the current Agreement, effective December 1, 1943, was executed, and was covered by the Agreement. Rule 1 (c) of this Agreement is as follows:

"When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

1. To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed.

2. In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yardmaster, Foreman, or other supervisory employe, provided that less than 4 hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yardmaster, Foreman or other supervisory employe."

This rule, in our opinion, very clearly governs the disposition of any work that remains when a position is abolished. Its language is unambiguous, and it is not for this Board to belabor its meaning. The Carrier contends that the work of the abolished position was incident to the duties of the Ticket Agent and could, therefore, be performed by him. Under a different Agreement or as a general proposition under Rule 1 (e) of this Agreement this contention of the Carrier might have merit, but here we are dealing with the assignment of work remaining when a position covered by the Agreement is abolished, and under the clear language of Rule 1(c), such remaining work must be assigned to another or other positions covered by the Agreement if there are such positions, and clearly there were such positions at Warren. Under sub-division 2, of Rule 1(c), remaining work incident to that of an Agent, may be performed by him when a position is abolished only in the event that such work does not exceed 4 hours, and only if there is no position under the Agreement at the place the work is to be performed. We are of the opinion that the Agreement, Rule 1 (c), was violated if the Agent at Warren performed the work which remained when the Ticket Clerk position was abolished on January 20, 1946.

This brings us to the fact question: did the Agent at Warren perform the work remaining when the position was abolished? The Carrier throughout this record has relied upon its interpretation of the Rules and virtually ignored the fact issue. The employees have devoted some attention to the fact question, but they also have devoted themselves mostly to the Rules. It appears that both parties have more or less lost sight of the fact question because of the dispute over the interpretation of the Rules. In view of this fact we believe the dispute should be remanded to the parties for settlement under the Agreement as herein construed. In the event no settlement is reached within thirty days after this Award is made, each party may have sixty days thereafter to submit to this Board proof of the fact question involved.

In view of the fact that this dispute is to be remanded to the parties we wish to state that so far as concerns the future it is not incumbent upon the Carrier to reestablish the position, provided any work remaining from the abolished position is assigned in accordance with the Agreement. Award 1300.

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 parties waived oral hearing thereon;

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 dispute should be remanded to the parties for settlement on the property.

AWARD

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1947.