

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

ERIE RAILROAD COMPANY

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

(1) The Carrier violated the Clerks' Agreement at Youngstown, Ohio, when, effective September 1, 1945, it abolished a full time eight hour Ticket Clerk position, hours 6:00 A. M. to 2:00 P. M., 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 by appropriate award and order of the Board to restore such position to the scope and application of the Clerks' Agreement and compensate all employees affected by such violation, retroactive to September 1, 1945.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to September 1, 1945, there was employed at the Youngstown Ticket Office, in addition to the Ticket Agent, one (1) Chief Ticket Clerk and six (6) Ticket Clerks with following rates of pay and hours of assignment:

Chief Ticket Clerk.	7:30 A. M.	to 3:30 P. M.	Rate: \$233.40 per mo.
1 " " "	6:00 A. M.	to 2:00 P. M.	" 7.02 per da.
" " "	8:00 A. M.	to 4:00 P. M.	" 7.12 " "
" " "	12:00 Noon	to 8:00 P. M.	" 7.02 " "
" " "	3:00 P. M.	to 11:00 P. M.	" 6.92 " "
" " "	4:00 P. M.	to 12:00 Midnight	" 7.42 " "
" " "	12:00 Midnight	to 8:00 A. M.	" 7.32 " "

On and after September 1, 1945, the force consisted, in addition to the Ticket Agent, of:

1 Chief Ticket Clerk	7:30 A. M.	to 3:30 P. M.	Rate: \$233.40 per mo.
" " " "	8:00 A. M.	to 4:00 P. M.	" 7.12 per da.
" " " "	1:00 P. M.	to 9:00 P. M.	" 7.02 " "
" " " "	4:00 P. M.	to 12:00 Midnight	" 7.42 " "
" " " "	12:00 Midnight	to 8:00 A. M.	" 7.32 " "

The work remaining on position, hours 6:00 A. M. to 2:00 P. M. has been assigned to, and is now performed by, the Ticket Agent, so that the Agent now handles Pullman reservations, sells tickets and other clerical work previously performed on the abolished position.

**OPINION OF BOARD:** Prior to July, 1942, at the Youngstown, Ohio, Passenger Station the force consisted of the following with their assigned hours:

Ticket Agent	8:00 A. M. to 5:00 P. M.
Chief Clerk	7:30 A. M. to 3:30 P. M.
Ticket Clerk	3:00 P. M. to 11:00 P. M.
Ticket Clerk	3:30 P. M. to 11:30 P. M.
Ticket Clerk	11:30 P. M. to 7:30 A. M.

On July 9, 1942, an additional Ticket Clerk position was established with assigned hours 8:00 A. M. to 4:00 P. M.

On December 13, 1942, another position was established with assigned hours 3:00 P. M. to 11:00 P. M.

On November 1, 1943, still another position was established with assigned hours 6:00 A. M. to 2:00 P. M.

With the establishment of these new positions the force consisted of the following with assigned hours:

Ticket Agent	8:00 A. M. to 5:00 P. M.
Chief Clerk	7:30 A. M. to 3:30 P. M.
Ticket Clerk	6:00 A. M. to 2:00 P. M.
Ticket Clerk	12:00 Noon to 8:00 P. M.
Ticket Clerk	3:00 P. M. to 11:00 P. M.
Ticket Clerk	4:00 P. M. to 12:00 Midnight
Ticket Clerk	12:00 Midnight to 8:00 A. M.

On September 1, 1945, the position with assigned hours 6:00 A. M. to 2:00 P. M. and another Clerk's position were abolished.

On and after September 1, 1945, there appears to have been some adjustment of the assigned hours of the remaining positions and the following appears to have been the alignment thereafter:

Ticket Agent	8:00 A. M. to 5:00 P. M.
Chief Clerk	7:30 A. M. to 3:30 P. M.
Ticket Clerk	8:00 A. M. to 4:00 P. M.
Ticket Clerk	1:00 P. M. to 9:00 P. M.
Ticket Clerk	4:00 P. M. to 12:00 Midnight
Ticket Clerk	12:00 Midnight to 8:00 A. M.

The complaint of the Organization is that the abolishing of the position having assigned hours from 6:00 A. M. to 2:00 P. M. was under the facts as disclosed by the record a violation of the controlling Agreement. The particular contention is that the work of the position was assigned to the Ticket Agent, a position not covered by the Agreement, and one to which, under the facts and terms of the Agreement, it could not be assigned.

The portion of the Agreement which has application here is Rule 1(c), 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 prescribes the method for the disposition of the work remaining in a position such as was abolished here. Under the clear and unambiguous language of the rule the remaining work is to be assigned to another or other positions covered by the Agreement if there are other positions at the location where the work is to be performed. Likewise, it may not be assigned to an Agent, Yardmaster, Foreman or other supervisory employe if four hours of work of the abolished position remains. The only condition under which the work of an abolished clerical position may be assigned to an Agent, Yardmaster, Foreman or other supervisory employe is when there is no clerical position remaining at the location and when the work of the abolished position is less than four hours and is incident to the work of an Agent, Yardmaster, Foreman or other supervisory employe.

The question then of whether or not there was a violation of the Agreement under this analysis of the Rule becomes one of fact.

At the location of this abolished position there were other clerical positions. As to this there is no question. Therefore, under the Rule it became the duty of the Carrier, in order to conform to the Rule, to assign the work of the abolished position, if any remained, to those positions. Since there were these other positions, no matter what amount of work of the abolished position was left, and even if the work might be considered generally as incident to the duties of an Agent, it could not be assigned to the Agent.

The decision here then must turn on the question of whether or not when this position was abolished the work of it was assigned to the Agent. The Carrier insists that it was not, and the insistence of the Organization is, of course, the opposite.

There are many generalizations in the record with regard to the situation and condition involved here, but in addition the parties have each furnished purported authentic information.

On the part of the Carrier a signed statement of the Agent was supplied. With regard to the position involved here and another the Agent stated:

"The work continued to increase and another position was established November 1, 1943, with hours 6:00 A. M. to 2:00 P. M. to handle telephone calls and to assist the Ticket Agent and Clerks.

"With these two additional positions, there was a general redistribution of work of the entire force to take care of the expanded work.

"After the war, the amount of travel and the inquiries concerning train time, routing, etc., appreciably decreased, and effective September 1, 1945, the two additional positions that had been established for the purpose of taking care of expanded work were abolished."

He further stated in substance that after the position in question was abolished he did not assume any incidental clerical work, but continued to perform all of the duties as he had always done as Ticket Agent; that he performed no more clerical work after September 1, 1945, than while the two positions referred to were in existence nor before they came into being; that no work of the abolished position was performed by him, but that it was added to other clerical positions; and that after September 1, 1945, he performed the same class of work that he had always performed as Ticket Agent.

As against this the Organization supplied four signed statements purporting to relate the pertinent facts. The statements were made by the Baggage Agent at this point, a position under the jurisdiction of the Ticket Agent, the Chief Clerk, a Ticket Clerk who had been employed at this station since 1942 and who was working as relief Ticket Clerk on five positions at the time his statement was made, and a Ticket Clerk who held the position in question for some time in 1943 until it was abolished September 1, 1945,

after which date he took Ticket Clerk assignment from 12:00 Midnight to 8:00 A. M. The statements are positive and are substantially in accord with each other.

The statement of the Chief Clerk is concise and in it is fairly reflected the information furnished by the other three. Pertinent parts of it are the following:

"Prior to September 1, 1945, we had one Ticket Clerk working 6:00 A. M. to 2:00 P. M. and one Ticket Clerk from 8:00 A. M. to 4:00 P. M. The 6:00 A. M. to 2:00 P. M. Ticket Clerk took care of ticket window, answered phones until 8:00 A. M. when he took over the Pullman Reservation Clerk desk and handled all Pullman reservations, answered telephone calls, handled messages and worked reports. When the second Reservation Clerk came out at 12:00 P. M. to 8:00 P. M. he sold tickets, worked reports and other office work until 2:00 P. M. when he took over the reservation desk until 8:00 P. M.

"During this period the Ticket Agent supervised the office, handled correspondence, made business calls and answered telephone calls when needed.

"Effective September 1, 1945, the position working 6:00 A. M. to 2:00 P. M. and one working 3:00 P. M. to 11:00 P. M. was abolished. Also, the Reservation Clerk working 12:00 P. M. to 8:00 P. M. was changed to 1:00 P. M. to 9:00 P. M. in order to assist the second trick Clerk working 4:00 P. M. to 12:00 Midnight.

"Due to this there is left myself and Ticket Clerk working 8:00 A. M. to 4:00 P. M. to handle all of the work between 7:30 A. M. and 1:00 P. M. when the Reservation Clerk reported for work.

"As my duties and those of the Ticket Clerk working 8:00 A. M. to 4:00 P. M. did not change at that time or since, we cannot handle any additional work. Therefore, the Ticket Agent took over the reservation desk at 8:00 A. M. to 1:00 P. M. handling all Pullman reservations, making up Pullman and railroad tickets, answering telephones and handling messages and all other work which was done by Ticket Clerks before the positions were abolished September 1, 1945.

"\* \* \*. The Ticket Agent not only works the desk from 8:00 A. M. to 12:00 P. M. but the Reservation Clerk's position, since changed from 1:00 P. M. to 8:00 P. M. to 12:00 Noon to 8:00 P. M. He has to assist the Clerk with the work daily. \* \* \*. Therefore, the Ticket Agent is now and has since September 1, 1945, performed all the duties which were performed by the Clerks before the positions were abolished which require from 6 to 7 hours per day including Sundays and holidays. We also have four telephones in our office which are continually ringing, and as the Ticket Clerk and myself are too busy to answer, the Ticket Agent has to answer them."

If the weight of evidence must control, and we think it must, we are obliged to say that the Organization has sustained its claim that the Agreement has been violated. We take the same view toward the interpretation and application of the appropriate Rule as was taken in Award 3583 and Award 3776, the latter being an award on reappearance here of the same subject matter as was considered in Award 3583, that is that the question is one of fact. Here, however, we conclude that there has been factual proof of a violation of the Agreement whereas there it was concluded that there was not.

In this docket, as was true in Award 3583, it must be said that it is not within the province of this Division to require restoration of a position, but it becomes apparent that the Carrier is confronted with the alternative of either restoring the position or assigning to Clerks the clerical duties formerly performed in the abolished position and now being performed by the Ticket Agent in order to escape the penalty for continuing 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 Employee involved in this dispute are respectively carrier and employee 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 Agreement has been violated and the claim is sustained with the right of employees affected to compensation retroactive to September 1, 1945.

#### AWARD

Claim that the Agreement has been violated sustained with award for retroactive compensation to employees affected to September 1, 1945.

Claim for restoration of Clerk's position denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1948.