

Award No. 5024
Docket No. CL-5068

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

(1) When on January 1, 1949 Carrier abolished a position of Warehouseman-Clerk theretofore established as a position and filled pursuant to rules of Agreement effective April 1, 1945 at Colfax, Washington and by unilateral action transferred the work normally attached to the position of Warehouseman-Clerk to be performed by other than employees embraced within the Scope Rule of our Agreement with the Carrier, thus violating the provisions thereof.

(2) That the position of Warehouseman-Clerk, as it existed immediately preceding January 1, 1949, be reinstated and that the regular assigned occupant thereof as of that date, namely, J. M. Lee, be returned thereto and compensated for all wage loss sustained resulting from his irregular removal therefrom on January 1, 1949, and that all other employees affected by Mr. Lee's displacement from the position of Warehouseman-Clerk at Colfax on January 1, 1949, be compensated for the wage loss sustained by them retroactive to January 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: A. Immediately prior to January 1, 1949 there was employed at Colfax, the following station force:

Position	Hours of Service
Agent	8:00 A.M.-5:00 P.M.
Telegrapher-Passenger Station	8:00 A.M.-5:00 P.M.
Warehouseman-Clerk, Frt. Station	8:00 A.M.-5:00 P.M.

Effective January 1, 1949, the position of Warehouseman-Clerk at the Freight Station was abolished and concurrently therewith the Telegrapher at the Passenger Station had his hours of service changed from 8 A.M.-5:00 P.M. to 7:45 A.M.-3:45 P.M. and an additional Telegrapher put on, hours of service 12 Noon-8 P.M. However, he was required to report at the Freight Station for service as a Clerk from 12 Noon-3:45 P.M. whereupon he transferred his employment location to the Passenger Station some 920 feet apart, relieving the first shift Telegrapher at the Passenger Station at his, the first shift's, close of tour of duty. Subsequently (date not available to employees) the first shift Telegrapher's hours were changed from 7:45 A.M.-3:45 P.M. to 7 A.M.-3 P.M. and the second shift from 12 Noon-8 P.M. to 1 P.M.-9 P.M.,

"NOTE: Clerical work occurring within spread of eight or nine hours, shall not be assigned to more than one position not classified as clerk for the purpose of keeping time devoted to such work by any one employe below four hours per day.

"(c) Janitors and laborers employed in and around offices, stations, storehouses and warehouses."

The balance of this rule is not pertinent to this dispute.

The clerical work now performed by telegrapher-clerk at Colfax that was done by the warehouseman-clerk prior to January 1, 1949 does not regularly consume more than three hours of his time. Rule 1(a) provides that employes who regularly devote not less than four hours per day to the compiling, writing and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements and similar work, and to operation of teletypes and office mechanical equipment and devices in connection with such duties and work will be governed by the rules in the Brotherhood of Railway Clerks agreement.

Prior to May, 1943, all work in connection with the station at Colfax was performed by an agent and two telegrapher-clerks when, because of war conditions, it was not possible to hire telegraphers to fill all positions where they were needed. It was possible to get along with one telegrapher-clerk at Colfax by requiring this one employe to protect train order work over a spread of twelve to as much as eighteen hours a day by putting on a warehouseman-clerk but this arrangement obviously was not a desirable one. The change made January 1, 1949 was simply a return to the much more desirable and practical arrangement that was in effect before war conditions forced the reduction of telegrapher-clerk assignments to one. There is not now and has not at any time for the past fifteen years or more been sufficient work at Colfax to justify the assignment of more than three employes and the spread of time necessary to be covered by a telegrapher daily is too great to attempt to handle with one man when it is possible to secure the services of two.

This dispute has no working agreement support but is an attempt on the part of the Employees' Organization to establish a precedent, that once a clerical assignment is substituted through necessity or any other cause for another assignment, the clerical position cannot be abolished with return of normal conditions that justify resumption of normal force of employes.

This claim is without merit and the Carrier respectfully requests the Third Division, National Railroad Adjustment Board to deny the claim.

(Exhibits not reproduced).

OPINION OF BOARD: The issues in this case are not nearly as complex as the parties would make them appear. Facts controlling them are not in dispute and will be briefly summarized without reference to much in the record that is extraneous and has little to do with decision of the cause on the merits.

On all dates in question the Carrier maintained a passenger depot and a freight depot at its station at Colfax, Washington. The two stations are separated by the Palouse River and in going to and from one to the other it is necessary to cross a bridge maintained by the Carrier. The Employes assert the passenger depot is located 920 feet from the freight depot while the Carrier asserts the distance is but 600 feet. We are not too concerned with the point. It suffices to say work of the positions here involved at the freight house was entirely clerical in nature while that at the passenger depot was both telegraphic and clerical.

Prior to 1931 and up until 1934 the Carrier employed one or two clerks at Colfax and a like force of telegraph operators. In 1934, with the positions of Agent, Clerk, and Telegrapher remaining the Carrier discontinued

the clerical position and established the position of Second Telegrapher-Clerk. The force at Colfax station then consisted of an agent and two telegraphers and/or telegrapher-clerks. With this arrangement, which continued until May 1943, the second telegrapher-clerk reported at the freight house and performed clerical work for approximately three hours. He then reported at the passenger station to complete his tour of duty consisting of both telegraphic and clerical work. This situation existed until May 26, 1943. On that day, the Carrier concedes that because of wartime conditions and a shortage of telegraph operators it abolished the second Telegrapher-Clerk position and established a new position of Warehouseman-Clerk. From May 1943 until January 1, 1949, a period of five and one-half years, the force at Colfax consisted of the station agent, and a telegrapher, hours 8:00 A.M. to 5:00 P.M., at the passenger station and a warehouseman-clerk, hours 8:00 A.M. to 5:00 P.M., at the freight station. In the meantime the parties had entered into a new agreement effective April 1, 1945. Thereafter, there can be no dispute about the facts.

On January 1, 1949, without negotiation or anything of that sort the Carrier unilaterally, as it states in order to return to a more desirable and practical arrangement, abolished the position of warehouseman-clerk and re-established a position of second telegrapher-clerk. Since that position had been abolished in May, 1943 it should perhaps be stated the practical result of the Carrier's action was to create a new position of second telegrapher-clerk at Colfax, with hours 12:30 P.M. to 8:30 P.M., the incumbent of which was required to report at the freight station at 12:30 P.M. and perform the routine clerical work formerly performed by the warehouseman-clerk until 3:00 P.M. There was, as we have indicated, no telegraphic work to be performed there. Thereafter he was required to proceed to the passenger station, taking with him such clerical work as had not been finished at the freight house, for completion at that point. In addition he was required to perform such telegraphic work at the passenger station as was required to complete or round out his tour of duty. It should perhaps be also added at this point that so far as the record discloses the work of the warehouseman-clerk position had not disappeared but through a rearrangement of the work schedule was simply absorbed by the new position. In passing, it should also be noted, the Carrier asserts and for present purposes we assume, that from 1934 to 1943 all clerical work at the Colfax station, including the freight house, was performed by employees within the scope of the telegraphic agreement.

Limits of time and space preclude detailed attention to the extended arguments advanced by the Carrier as grounds for the denial of the instant claim. It suffices to say they all revolve around one proposition and that is that under the existing agreement the clerks do not have the unlimited right to performance of all clerical work. It is true that clerical work may be properly performed by telegraphers under the historical precedents discussed in Award 615 and as qualified by Award 636. In fact, as late as Award 5014 the author of this Opinion recognized that principle when in that Opinion he said that as between a telegrapher-clerk position to which clerical duties were originally assigned and a clerk's position to which a portion of such duties were subsequently assigned the telegrapher has the right to the position, including the assumption of its remaining clerical duties, when it becomes necessary to abolish one or the other of the two positions. The divers conditions and circumstances under which a telegrapher is authorized to perform both telegraphic and incidental clerical duties are well summed up in Awards 4559 and 4734 and need not be repeated here. Even so it does not necessarily follow, as the Carrier contends, that under the facts and circumstances presented by the record in the instant case the Carrier did not violate the Agreement.

We think, upon analysis of the foregoing Awards and numerous others to which we have not deemed it necessary to refer, there are two sound reasons why the instant claim has merit and it must be held the Agreement was violated by the abolishment of the involved warehouseman-clerk position.

In the first place it must be remembered that on May 26, 1943, the Carrier by its own action saw fit to abolish the position of second telegrapher-clerk at Colfax and establish an entirely new position, without any telegraphic duties, that of warehouseman-clerk at its freight station located at that point. We are not concerned with its reasons for abolishment of the one and the establishment of the other. The cold facts are that it made some sort of an arrangement whereby the work of the second telegrapher-clerk position disappeared and it had the right to abolish it and create the new position of warehouseman-clerk at its freight depot. Thereupon the telegrapher-clerk position went out of existence and the warehouseman-clerk position came into being. In such a situation, upon establishment of the latter position, there can be no question but what our Awards are to the effect that thereafter such position and its work became subject to the Clerks' Agreement and could be removed therefrom only by Agreement of the parties. (See Awards 751, 4734, 3858 and 4832). This is particularly true where—as here—after the Carrier's action the parties negotiated a new Agreement without excepting such position from the scope and operation of its terms.

In reaching the foregoing conclusion we do not overlook the rule recognized in Award 5014, or others of similar import to which we have heretofore referred. None of them go so far as to hold that under the existing facts and circumstances the Carrier could abolish the established warehouseman-clerk position and assign its work to a newly created position not covered by the terms of the Clerks' Agreement.

The second and final reason for holding the Carrier's action in abolishing the warehouseman-clerk position and transferring its work to the newly established position of second telegrapher-clerk was in violation of the Agreement need not be unduly labored. The record clearly establishes that what the Carrier was attempting to do was to abolish the clerical position in the freight depot, located from 600 to 900 feet from the passenger station where the telegraphers were employed and require the incumbent of the reestablished second telegrapher-clerk position to divide his time between the passenger station and the freight house where there was no telegraphic work to perform. That, under our Awards, was beyond the scope of the rule permitting telegraphers to perform clerical duties to the extent necessary to fill out their time. In Award 4288, we said:

"We think the rule stated in Award 615, as limited by Award 636 and other subsequent awards, means that telegraphers with telegraphic duties to perform have the right to perform clerical duties to the extent necessary to fill out their time, but that said clerical duties must be incidental to or in proximity with their work as a telegrapher. See Award 3988. It was never intended that a telegrapher might be severed from his post and sent to an unrelated location to fill out his time, or that clerical work might be taken from a clerical position at an unrelated point and brought to a telegrapher to be performed by him. Such an interpretation would permit an improper invasion of the rights of clerks under their agreement and render the positions of clerks very insecure.

"In the case before us the clerical position abolished was in the freight house, located some 500 feet from the passenger station, where the telegraphers were employed. To abolish a position in the freight house, a position wholly clerical in character, and assign the work to telegraphers at the passenger station to fill out their time, constitutes a violation of the announced rule. The fact that telegraphers had formerly performed this work does not alter the situation. An affirmative award is in order."

Award 3932 and 4867 are to the same effect.

We have purposely refrained from mentioning a technical objection to the claim until after consideration of the cause on its merits. The Carrier insists the following portion of item 2 of the statement of claim,

"... and that all other employes affected by Mr. Lee's displacement from the position of Warehouseman-Clerk at Colfax on January 1, 1949, be compensated for the wage loss sustained by them retroactive to January 1, 1949."

was not a part of the claim or dispute as it was presented, discussed and processed on the property. The Employes say that it was. Inasmuch as this contention can also be decided upon the basis of precedent we need not pass upon the controverted factual issue. In Award 3256, to which we adhere, in disposing of a similar claim, we said:

"The Carrier urges that the claim originally made is not the same claim that is now before this Board. It is a fact established by the record that variances in the form of the claim occurred from time to time until the claim reached this Board. In this respect, it was not intended by the Railway Labor Act that its administration should become super-technical and that the disposition of claims should become involved in intricate procedures having the effect of delaying rather than expediting the settlement of disputes. The subject matter of the claim—the claimed violation of the Agreement—has been the same throughout its handling. The fact that the reparation asked for because of the alleged violation may have been amended from time to time, does not result in a change in the identity of the subject of the claim. The relief demanded is ordinarily treated as no part of the claim and consequently may be amended from time to time without bringing about a variance that would deprive this Board of authority to hear and determine it. No prejudice to the Carrier appears to have resulted in the present case and the claim of variance is without merit."

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of September, 1950.