Award No. 5458
Docket No. CL-5480

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

THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) Carrier violated the current Clerks' Agreement when on September 9, 1947, it nominally abolished Steno-Clerk Position No. 22 in the Trainmaster's Office, Fort Worth, Texas, and, concurrently therewith, removed approximately six hours forty minutes of the routine clerical work per day attached thereto from the scope and operation of the agreement by assignment to employes occupying positions wholly excepted therefrom; and,

(b) Position of Steno-Clerk in Trainmaster's Office, Fort Worth, Texas, shall now be restored and the work here involved returned to the scope and operation of the Clerks' Agreement by assignment to employes covered thereby; and,

(c) Paul Prehoditch, W. C. Parks and/or all other employes adversely affected by Carrier's improper action described above shall be paid for all wage losses suffered as result thereof from September 9, 1947, until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: On October 1, 1942, the effective date of the current Clerks' Agreement, the force in the Trainmaster's Office at Fort Worth, Texas, consisted of the following two positions, both of which were wholly excepted from the Clerks' Agreement:

Position Number	Title
20	Chief Clerk to Trainmaster
21	Personal Stenographer to Trainmaster

This force remained unchanged until October, 1944, during which month the Superintendent of the Northern Division issued his Bulletin No. 28 establishing a schedule clerical position of Steno-Clerk in the Trainmaster's Office, which bulletin read as follows:

"Fort Worth, October 11, 1944

"Bulletin No. 28—

TO: ALL CLERICAL EMPLOYES—Superintendent's Office, Train-

(3) There is no rule in the Clerks' Agreement, and the Employes have cited none, which prohibits the performance of those duties by the excepted positions:

(4) The rules of Agreement cited by the Employes do not support the claim, and

(5) The Employes' claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: For many years prior to October 1, 1942, the effective date of the current Agreement, the Trainmaster's Office force at Fort Worth, Texas, consisted of two positions, one designated as No. 20, Chief Clerk, and the other as No. 21, Trainmaster's Stenographer, and the occupants of such positions handled all of the clerical duties and work incident to and necessary to be performed in such office. Both of these positions have always been excepted from provisions of the Clerks' Agreement.

October 17, 1944, due to increased work in the Office of the Trainmaster of such proportion the two employes just mentioned were unable to handle it in connection with their already existing duties, the Carrier established an additional position in such Office, titled Stenographer-Clerk, designated as Position No. 22, to which, for all purposes essential to this Opinion, it can be stated duties then being performed by occupants of the two excepted positions were assigned.

On September 9, 1947, the work in the Trainmaster's Office having decreased to the extent the excepted Chief Clerk and Stenographer had sufficient time to perform all duties theretofore performed by them in such office without the assistance of the Stenographer-Clerk, the Carrier abolished the latter position and the work which had theretofore been taken from such excepted positions, amounting to six hours and forty minutes, was returned thereto. At the same time, the remainder of the work of the Stenographer-Clerk's position, amounting to one hour and 20 minutes, was assigned to other schedule clerical positions in the same seniority district. The Employes make no complaint regarding the assignment of the work last mentioned, hence it requires no attention and will not again be mentioned.

Boiled down, the essence of all contentions advanced by the parties in support of their respective positions can be stated very briefly. The Employes claim that by the establishment of the Stenographer-Clerk's position the Carrier placed the work theretofore belonging to the excepted positions within the Scope of the Agreement and that it could not thereafter abolish that position and return the work to the two excepted positions without negotiation, even though it sprang from that source. The Carrier insists the Agreement does not contain anything precluding its action and that under what is commonly referred to as the ebb and flow doctrine it had a right to abolish the Stenographer-Clerk's position and return its work to the positions from whence it came whenever the duties thereof had decreased to the point where they could be performed by their duly assigned occupants.

At this point it should perhaps be stated, in fact the Employes do not dispute it, that the work of the excepted positions had decreased to the point where it could be and now is being performed by the occupants thereof.

Under many of our decisions there can be no question that if the clerical work of a position of another craft becomes too great for its holder, it may be assigned only to a Clerk, and when the amount of clerical work abates so that the occupant can again perform it himself, it can be turned back to him without violating the Clerks' Agreement.

The general rule is well stated in Award No. 1314, where it is said:

"With these principles in mind we return to their practical application to the facts of this case. The carrier urges that many of the duties of the Chief Dispatcher's clerk were the ordinary duties of the Chief Dispatcher; that they were interchangeable and that the clerk's position was due to an overflow of the Chief Dispatcher's duties in busy times. If so, and we have no reason to doubt that fact, such duties as the Dispatcher retained which were incident and reasonably appropriate to his position after the abolition of his clerk's position would seem to come under the ruling of Award 931. Where the duties incidental and normal to a position not under the craft flow out directly to an assistant included in the agreement and taken on where work increased to a point where such assistance was necessary, it would seem that by the same token they could ebb back directly to the original position when the necessity for the assistance no longer existed, provided the duties so involved in the ebb and flow were such as were indigenous to that position—normal and incident to it."

See also Award No. 4939, wherein the following statement appears:

"The Carrier may in the interest of efficiency or economy abolish positions with propriety unless it violates some rule of the Agreement. It may not as a general rule abolish them and reassign the work to employes not within the Agreement. If a clerk is performing work which could properly be performed by a foreman of another craft as being incidental to his position, it may upon the abolishment of the clerical position flow back to the foreman. Award 2334. Remaining clerical work may properly be distributed to others within the Clerks' Agreement."

For other of our decisions to the same effect, see Awards Nos. 1593, 1694 and 2234.

It must be kept in mind that in the instant case there existed on all dates in question a Memorandum of Interpretation (agreed to by the parties of application of Article 1 (Scope Rule) and 2 (rule defining Clerks) of the current Agreement) which, so far as pertinent hereto, reads:

"In the application of Articles I and II of Agreement to become effective October 1, 1942, it is understood and agreed that the work of Class 1, 2 and 3 employes, referred to in said Agreement, when performed by officials and others not covered by the Agreement, incident to or as a consequence of their official or other positions, is not subject to the provisions of said Agreement."

The Employes recognize the decisions to which we have heretofore referred and impliedly, if not actually, concede the rule therein announced is well established and in full force and effect. However, they contend that our rulings have been that such work cannot be given to an excepted position. In support of their position on this point they direct attention to Awards 3191, 3192, 3504 and 4345, involving disputes where this same Agreement was in question. We have examined these Awards and find they all relate to work reserved to Clerks under the current Agreement which the Agreement did not permit the holder of the excepted position to perform, and none of them deal with a situation such as we have here, i. e., where the work first belonged to the holder of the excepted position, was later assigned because of excess work, and subsequently returned to the position from whence it came. In fact, in Award No. 3191, touching directly on the force and effect to be given the Memorandum from which we have heretofore quoted, and it should be added the other Awards last cited recognize the same principle, we said:

"We think this means that officials and others not covered by the Agreement may perform work of Class 1, 2 and 3 employes with-

out violating the Agreement if it is incidental to or arises as a consequence of their positions. The work of the Chief Clerk to Agent at La Junta was entirely supervisory insofar as the work here involved was concerned."

* * * * * * *

"The intent is thereby clearly shown to limit the work which the incumbent of an excepted position could perform to that which was incidental to or arose out of it."

In connection with this same point, Employes also place great weight on the statement, "But they (referring to duties encompassed within the terms of Scope Rule) cannot be given to an excepted position", appearing in Award No. 1314, from which we have heretofore quoted. It must be remembered this decision was handed down prior to the effective date of the Memorandum heretofore mentioned. Even so we think the statement last quoted had reference to work falling within the category of the work referred to in the Awards last cited and was not intended to have reference to consequences resulting from application of the ebb and flow doctrine.

Other decisions cited by the Employes as supporting their position on this particular point antedate the Memorandum Agreement involved in this case and hence are either inapplicable or clearly distinguishable.

Without more, faced by the Memorandum in question, we would have no difficulty under the confronting facts in concluding the Awards first herein cited are not decisive of the instant case for, when the Memorandum is given proper consideration, it becomes evident that the excepted employes, so far as the work of their positions is concerned, are to be placed in the same category as the employes involved in those Awards. So regarded the inescapable result, under the rule established by such decisions, is that the work here involved ebbs back directly to their positions when the necessity for the assistance of the Stenographer-Clerk no longer existed.

But that is not all. In a comparatively recent Award, No. 5199, in a dispute wherein this same Carrier was involved, the question in issue was whether, with an identical Memorandum of Interpretation, the Carrier had a right to have a Warehouse Foreman, a position excepted from the Clerks' Agreement, to perform work under conditions and circumstances which make the principles therein announced applicable here. There, in holding such action was not in violation of the Agreement, we said:

"This agreed to interpretation of the parties has the effect of applying to the work of Class 1, 2 and 3 employes under Articles I and II of their Agreement, effective October 1, 1942, the ebb and flow principle when such work is incident to or arises out of an official position, or a position not under the Clerk's Agreement, and has flowed out therefrom. The principle of ebb and flow of clerical work incident to or arising out of an official position, or a position not under the Clerks' Agreement, is not a catch-all doctrine permitting Carrier to have such officials or other positions not under the Clerks' Agreement perform any and all clerical work regardless of its nature. It applies when the clerical work which is incident thereto and arises therefrom is ebbing back to the position from which it had previously flowed out."

* * * * * *

"The position of Warehouse Foreman at Fort Worth was established February 1, 1922, and has always been excepted from the Clerks' Agreement. Shortly after it was established a joint check of the duties thereof was made to determine if it should come under

the then Clerks' Agreement. That was made on January 30, 1923. This check shows that duties of the same kind or nature as those now complained of were then being performed by the Warehouse Foreman. How long he continued to perform part or all of them is not shown, although apparently he did so for a considerable time. With one exception, which will hereinafter be more fully discussed, these duties were incident to or arose out of the position of Warehouse Foreman. Such being true the Carrier, under the agreed to interpretation, had a right to have the Warehouse Foreman perform them."

We believe the Opinion from which we have just quoted is sound in principle. Therefore, based on what is there held and what has been heretofore stated in this Opinion we hold the Carrier's action in this case did not result in a violation of the existing Agreement between the parties.

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

The record fails to disclose the Agreement was violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of September, 1951.