

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(1) That the Carrier violated the Clerks' Agreement, effective May 14, 1948, as amended by Memorandum of Agreement, effective September 1, 1949, when, following the abolishment, effective May 8, 1950, of the position of Cashier's Clerk at the Freight Office, Manchester, N. H., rate of pay \$12.413 per day, held by Henry G. Lord, it required Mr. Lord to suspend work on his position of Car Service Clerk (rate of pay \$12.236 per day) and position of General Clerk (rate of pay \$12.056 per day) on various dates for the purpose of performing the duties and work formerly a part of the position of Cashier's Clerk, and declined to compensate him on the basis of the higher rate (\$12.413 per day) for the full day while performing such work; and

(2) That the Carrier shall now be required to compensate Mr. Henry G. Lord and any other employees who may have been similarly assigned to perform the work formerly a part of the abolished position of Cashier's Clerk for all wage loss sustained representing the difference between the rate of the position of Cashier's Clerk (\$12.413 per day) and the rate of pay of their position for each day when so assigned.

EMPLOYEES' STATEMENT OF FACTS: Effective May 8, 1950, the Carrier abolished the position of Cashier's Clerk in the Freight Office at Manchester, N. H., rate of pay \$12.413 per day, held by Mr. Henry G. Lord. Mr. Lord in turn exercised his seniority rights by making displacement upon the position of Car Service Clerk, rate of pay \$12.236 per day.

Notwithstanding the Carrier's action in abolishing the position of Cashier's Clerk, effective May 8, 1950, the duties, responsibilities and work thereof continued to exist and Mr. Lord was required to suspend work on his position on the following dates and during the hours indicated for the purpose of performing the duties and work of the position of Cashier's Clerk, formerly held by him, by direction of his supervisory officer:

during regular hours, among several employes, not clerical workers, in order to avoid creating a clerical position.

All of the above clearly indicates the foundation in rule for the aforesaid general principle.

Reference in Rule 16 to "performing such work" is so obviously intended as a prohibition to prevent Carrier from requiring an employe to regularly work for four (4) hours or more on "higher rated work" without creating a position to embrace such work at the higher rate, that no comment seems necessary. Certainly it was never the intent of the parties that this language required payment at some theoretical higher rate, for a full day when, as is evident in this claim, the employe merely rendered clerical assistance to some one for an extremely small portion of his regular tour of duty, on some days.

From Petitioner's reasoning in this docket, there would be no economic reason whatsoever for Carrier to abolish a position if even the slightest amount of the former work remained, for, according to his interpretation of Rule 16, one (1) minute of work, during an eight (8) hour tour of duty, performed by Claimant, which was formerly performed in connection with the abolished position, would call for the payment of the rate of the abolished position to claimant for the full day. Thus the abolished position rate would still have to be paid although only one (1) minute of work remains.

Carrier does not believe this to be a reasonable interpretation of Rule 16. Carrier does not believe the Board will condone such an interpretation. Carrier's reasonable principle, set forth above, is more nearly equitable.

The monetary consideration is small indeed. The principle involved, however, is highly important. The four (4) hour dividing line appears throughout Petitioner's agreement. It is a reasonable dividing line. It should be made applicable to the dispute here. The fact that claimant did assist the Cashier in the performance of routine clerical work for one hour or so on some days should not serve to recreate a position of Cashier's Clerk and the payment of a higher rate.

Before the position of Cashier's Clerk was created, any one of the clerks in the freight office was called upon to provide clerical assistance to the Cashier and no question of higher rate of compensation could possibly be involved. The former position of Cashier's Clerk was created because there was more than four (4) hours of clerical assistance required each day by the Cashier. With diminution of amount of clerical assistance due to decrease in business to a point where little or none was necessary, the position was abolished. The situation then reverted to its previous status. Any one clerk could be called upon to render the minor clerical assistance required by the Cashier and no varied rates are involved.

The clerical assistance rendered by claimant was of a minor nature. The actual clerical work involved was undoubtedly of a lower rated class than the work of his own position. There has been no showing that the work performed by claimant for an hour or so on certain days was, in any way, shap or manner, "higher rated work."

There is no merit in the claim in this docket and it should be denied.

All factual data and argument have been brought to the attention of Petitioner.

OPINION OF BOARD: On May 8, 1950, the Carrier abolished the position of Cashier's Clerk held by the Claimant, and rated \$12.413 per day.

Claimant, Henry G. Lord exercised his seniority rights displacing on the position of Car Service Clerk.

On August 24, 1950, the Carrier by bulletin notice established the position of General Clerk, which included certain duties of the abolished position of Cashier's Clerk. The new position was rated at \$12.056 per day. The Claimant bid in and received the new position.

The Local Chairman protested the action of the Carrier and on September 13, 1950, the Carrier informed the Local Chairman that the title would be changed to Cashier's Clerk and would be rated at \$12.413 per day.

The Claimant contends that Rules 16 and 14 (c) were violated. Rule 16 provides:

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates for the full day while occupying such positions or performing such work except when employees are filling in for other employees who are continuing under pay; employees temporarily assigned to lower rated positions or work shall not have their rate reduced except when a freight house clerk reverts to a freight handling position or a storehouse clerk reverts to a storehelper, or a storehelper to a laborer, under Rule 9 of this agreement."

Rule 14(c) provides:

"(c) Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing the rate of pay or evading the application of these rules."

The Carrier contends that the position of Cashier's Clerk was abolished under Rule 10 (b) which is as follows:

"(b) In reducing forces, (except in cases where the work on a given position or positions has been entirely discontinued) the lowest rated position or positions in the kind or section of work, and on the shift, in the office, station or department where the reduction occurs will be abolished."

and that the work of Cashier's Clerk had diminished to such an extent that the employee's time was not substantially needed to perform the duties of the position.

The record reveals that the Claimant performed Cashier's Clerk duties on the average of 2.2 hours per day for 39 days out of approximately 4 months of work. One day the Claimant performed 5 hours' work other than that the Claimant at no time performed more than 3 hours' work on any day. During July, August and September the Claimant performed Cashier Clerk's duties on only one day during each month.

This Board has held that a position could be abolished where the work of a position has declined to such an extent where a substantial part of the employee's time is not occupied with the duties of the position. See Award 5283, 439, 4759.

In the instant case the abolishment of the position was proper under Rule 10, due to the fact that the position did not require a substantial part of the Claimant's time. The ex parte submission of the Claimant set out the exact time he was required to work as a Cashier Clerk. Three hours a day are not a substantial part of an employee's time when he works eight hours a day.

The Carrier further contends that the claim as submitted to this Board is not the same claim as handled on the property. To this we cannot agree.

The violation of the rules as claimed was a continuing violation and the claim as submitted was handled on the property.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

The 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1952.