

**Award No. 6529
Docket No. CL-6579**

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated and continues to violate the Clerks' Agreement at Buckhannon, West Virginia, when on December 19, 1948, it abolished full-time position of Report Clerk No. 68-1-576, which had a full 8 hours of work attached thereto, and assigned a majority of the duties thereof to the Agent and/or an Express clerk, neither of whom was covered by the scope and application of the Clerks' Agreement; and

(2) That the scheduled work be returned to the scope and application of the Clerks' Agreement by restoring Claimant Mary Rexroad to her regular assignment of Report Clerk; and

(3) That Claimant Mary Rexroad and all other employees adversely affected now be compensated for all monetary losses sustained on December 19, 1948, and subsequent thereto until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: This dispute arises out of the Carrier's discontinuance of a position of Report Clerk No. 68-1-576 at the end of Claimant's tour of duty on December 18, 1948. The locale of the dispute was Buckhannon, West Virginia, where the Carrier maintains a separate passenger station and freight station. The two facilities are divided by a street approximately 60 feet wide. Employees' Exhibit "A" attached hereto is a rough draft of the two facilities.

Claimant was furloughed at the time the regularly assigned position of Report Clerk was discontinued on December 19, 1948. At that time, there was 8 hours work assigned to the position, which was distributed to the supervising Agent and Express employee, both of whom were entirely outside of the Clerks' Agreement, and various other scheduled clerical employees. A joint check (Employees' Exhibit "B") was made by Mr. W. C. Jones, representing Management and Mr. George Barnett, representing the Brotherhood, on February 20, 1951, of the work assigned to the positions here involved prior and subsequent to December 18, 1948. The results of the check are as follows:

**"REPORT OF JOINT CHECK MADE AT BUCKHANNON,
W. VA. ON FEBRUARY 20, 1951 BY W. C. JONES, REPRESENT-
ING MANAGEMENT, AND GEORGE BARNETT, REPRESENT-
ING THE BROTHERHOOD OF RAILWAY CLERKS, IN CON-**

Awards 806, 1405, 1418, 2138, 2334, 3211, 3735 and 3989 of this Division."

In this Division's Award No. 4477 it was held:

"When the work of clerks exceeds that which the telegrapher can perform and it becomes necessary to increase forces, the excess clerical work belongs to clerks and must be assigned to them. If the work recedes to the point where the telegrapher can perform it all, it is the clerks and not the telegraphers which must be cut off when telegraphic work remains to be performed."

The principle of "ebb and flow" has been reiterated in many recent awards, among them Awards Nos. 5458; 5489; 5658.

The Carrier believes that the instant case represents a proper and accurate application of this principle of "ebb and flow."

In view of the factual record herein, as well as the rule involved, the Carrier submits that there is no basis for a sustaining award in the instant case. Furthermore, the Carrier asserts that this Division has no authority to make any order directly, or by indirection, issue any verdict the net effect of which would be, to compel the Carrier to establish position or positions where none now exist. The Carrier respectfully requests this Division to find this claim as being without merit and to deny it accordingly.

In accordance with the requirements contained in this Division's Circular No. 1, issued October 19, 1934, the Carrier submits that all data in support of the Carrier's position in this case has been presented to, or is known by, the other party to this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The rule under consideration here is the same as that in Awards 6527 and 6528. It is contended by Petitioner that Carrier abolished the position of Report Clerk No. 68-1-576 at Buckhannon, West Virginia, effective December 18, 1948 and reassigned the remaining work in violation of Rule 1(c) and sub-section thereof. This, by reason of the fact, that more than four (4) hours of the work of the position remained to be performed. And in this connection that the Agent hired an Express Clerk who performed work of the position. The Agent is under another agreement, Telegraphers, and the newly created position that of Express Clerk was given to an employee not under any agreement, but as an employee to assist the Agent in Express work which was performed under another agreement between the Agent and the Express Company. That the contentions of Respondent Carrier that any work done by this employee, Express Clerk, for the Carrier was voluntary and not by direction of the Carrier should receive no consideration.

Respondent Carrier contends that the Agent is a person employed to do all kinds of work and all work flows from the Agent and no other person gains an exclusive right to the work assigned to the Agent. That the position was abolished in accordance with the terms of Rule 42 of the Clerks' Agreement, amended March 1, 1947.

Both parties refer to a joint check which was made in February, 1951. However, it is difficult to ascertain the precise condition existing as it appears to be ambiguous and contains some statements which would seem to be conflicting.

As held in Awards 6527 and 6528 the rule covering remaining work in an abolished position is clear and apparently such procedure was not followed in this case. See Award 3871 interpreting a similar rule in which it is held that all sub-sections of the rule must be construed together. A condi-

tion precedent to the application of the four sub-sections is the abolishment of the position. Therefore, the position was not abolished in fact by reasons of remaining work.

Claim (1) sustained

Claim (2) sustained

Claim (3) sustained

as to named claimant, Mary Rexroad, but not as to others adversely affected as it does not appear that other employes were adversely affected, or if such is the case it is not clearly shown to an extent to be intelligently passed upon. Also there should be deduction for outside earnings of claimant to be computed and such deduction made.

The jurisdictional question is not deemed to be well informed. See Awards 6527 and 6528 under similar facts as applied to the same rule as cited above.

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

Claims sustained in accordance with Opinion.

AWARD

Claims sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.