

Award No. 6683  
Docket No. CL-6614

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Norris C. Bakke, Referee

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**PARTIES TO DISPUTE:**

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

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

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

(1) The Carrier violated the terms of the currently effective Agreement between the parties, when, on March 22, 1952, without conference or agreement it abolished the position of Station Clerk at Mt. Vernon, Missouri, occupied by James E. Bass and assigned a majority of the duties of the position to the agent and the telegrapher, neither of whom holds any seniority or other rights under the Clerks' Agreement.

(2) The said station clerk position be restored and bulletined to clerical employes in the Eastern Division Seniority District.

(3) James E. Bass and all others adversely affected by the Carrier's arbitrary and unilateral action, now be reimbursed for all monetary loss sustained, until corrected.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to March 22, 1952 the regularly assigned station force at Mt. Vernon, Missouri, located in the Eastern Division Seniority District, consisted of the following positions:

Agent, assigned hours 8:00 A.M. to 12:00 Noon, 1:00 P.M. to 5:00 P.M. Monday through Friday.

Telegrapher, assigned hours 8:00 A.M. to 12:00 Noon, 1:00 P.M. to 5:00 P.M., Monday through Friday.

Cashier, assigned hours 8:00 A.M. to 12:00 Noon, 1:00 P.M. to 5:00 P.M. Monday through Friday.

Station Clerk, assigned hours 7:00 A.M. to 12:00 Noon, 1:00 P.M. to 4:00 P.M. Tuesday through Saturday.

Effective 4:00 P.M. Saturday, March 22, 1952, Carrier unilaterally discontinued position of Station Clerk, Mt. Vernon, Missouri (See Employees Exhibit 1) and assigned the following duties attached thereto to the Agent

The agent at Mt. Vernon is a working agent and is distinguished from supervising station agents at large points whose primary duties are supervisory in nature and not usually involving the personal performance of such work as is described in Grades 1 and 2.

For the claimed violation in Part 1 of the employees' claim, the employees ask in Part 2 that the station clerk position be restored and bulletined to clerical employees in the Eastern Division seniority district. The Carrier considers that it has submitted ample evidence to justify a denial of Part 1 and the Carrier does not in any manner recede from its position. However, it realizes that it cannot always anticipate what the findings of this Board may be, and in the event of an adverse decision with respect to Part 1, the Carrier submits that it has long been settled that this Board is without authority to direct the Carrier in what manner it will comply with the agreement. (Award 5253). Therefore, Part 2 of the employees' claim, in any event, should be denied.

In Part 3 the employees request that claimant Bass and all others adversely affected by reimbursed for all monetary loss sustained. The employees, in the handling of the dispute on the property, have submitted no evidence to establish that claimant Bass, or any other employee, sustained a monetary loss by reason of the Carrier's action. As proof of the fact that no employee now in the service and covered by agreement with the Brotherhood of Railway Clerks suffered a monetary loss, the following is submitted for the Board's consideration with respect to this part of the employees' claim:

When Clerk Bass' position was abolished at Mt. Vernon, he displaced G. P. Tankersley as warehouseman at Aurora, Mo., rate \$13.29 per day, which is the same rate of pay as the abolished position. Mr. Tankersley in turn displaced H. W. Skaggs on relief position No. 3 at Aurora, working station clerk position on Saturday, rate \$13.29 per day, bill clerk position Sunday and Monday, rate \$13.41 per day, ticket clerk position Tuesday and Wednesday, rate \$13.65 per day. Mr. Tankersley suffered no monetary loss. H. W. Skaggs displaced H. J. Arnold as ticket Clerk at Aurora, rate \$13.65 per day. He likewise suffered no monetary loss. Clerk H. J. Arnold was reduced to the extra list and shortly thereafter secured other employment and formally tendered his resignation to the Carrier on May 18, 1952. These facts justify a denial of Part 3 of the employees' claim.

All data used in support of the Carrier's position have been made available to the employees and are made a part of the question in dispute.

(Exhibits not reproduced)

**OPINION OF BOARD:** It appearing that there are other parties involved in this dispute than the ones represented, within the meaning of Sec. 3 (j) of the Railway Labor Act, to whom no notice was given, and the Carrier having properly raised the point as a matter of procedure, this claim must be dismissed without prejudice in line with Award No. 6680, this day announced.

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

That the Carrier and 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 claim should be dismissed without prejudice.

## AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1954.

**SPECIAL CONCURRING OPINION IN AWARD NO. 6683,  
DOCKET NO. CL-6614**

This is one of a line of four consecutive Awards entered by the Third Division on the same date. The full Opinion is found in Award No. 6680.

The referee makes reference in the full Opinion to what he calls the "Illinois Central case" and the "Allain case." These are respectively reported in 212 F. 2d 22 and 212 F. 2d 32. He points up the Court's language in the former case wherein it said, "At any rate, the Board has the choice of two alternatives, (1) proceed no further or (2) comply with the statutory requirement and proceed to a hearing on the merits, with an opportunity for all parties to be heard." And in all four of these Awards he has dismissed the claim. Therefore, we think that our Awards in this series are compatible with the first alternative expressed in the Opinion of the United States Circuit Court of Appeals.

This Board (Division) is a bipartisan creature of statute and is composed of five Carrier Members and five Labor Members. It employs, pursuant to the Railway Labor Act, an Executive Secretary. While its duty to give due notice is clearly expressed in the statute, the subject has proven to be of a most litigious character. The Executive Secretary has followed the practice of not giving due notice in those instances where it has been ordered by a referee Award unless the Labor Members' Chairman joins in giving him such direction. That direction has been withheld by the Labor Members of this Board irrespective of the many Court Cases holding the giving of notice to be our non-discretionary duty.

We can only look to the law and its interpretation by the Courts for our guide in the administration of our duty. Where that function is checked in the face of such a clear expression of our duty as lies before us in many cases, we are impelled to explain our position and concur in this referee's action, which we think is to "proceed no further." Similarly, when an Award has the effect of ordering due notice, and the actual giving of it is withheld, we are again of the opinion that we are still "proceeding no further." Surely, there can be no accumulation of liability under any claim beyond the point where this Board has failed to comply with what has been so effectively enunciated as its statutory duty.

/s/ E. T. Horsley  
/s/ R. M. Butler  
/s/ W. H. Castle  
/s/ C. P. Dugan  
/s/ J. E. Kemp