

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

MISSOURI 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 on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When, effective at the close of the day's work on Friday, March 26, 1954, it abolished all existing positions in the Supply Department at Paragould, Arkansas that were subject to the scope and operation of the Clerks' Agreement, as follows:

Position	Rate	Date
Sub-Storekeeper	\$16.86 per day	March 26, 1954, end of day's work
Storehelper	1.59 per hour	March 26, 1954, end of day's work
Store Laborer	1.55 per hour	March 26, 1954, end of day's work

and arbitrarily removed the work that subsisted out from under the Clerks' Agreement and absorbed the performance of same by giving the work to another class of employees outside of the Clerks' Agreement and to outside contractor and/or contract drayman, who held no seniority rights under the Clerks' Agreement, in violation of Rules 1, 2, 3 and related rules;

2. Storehelper Arthur L. Arnold, seniority in Class "B", Southern District Supply Department roster, September 1, 1952, who was placed out of all employment by reason of the Carrier's action and/or any other Storehelper entitled to the work on such days as Arnold was working extra on the seniority district, shall be paid an eight hour pro rata day at \$1.59 per hour, amount \$12.72 per day, for each working day commencing Monday, March 29, 1954, such claims to continue until the dispute is disposed of and the claims satisfied.

EMPLOYEES' STATEMENT OF FACTS: Paragould, Arkansas is a Division point on the Carrier's Memphis Division where the Carrier has maintained a Mechanical Department—"Locomotive and Car" and a Supply Department and Supply Department forces for many years.

Award 4446 approved abolishment of a clerical position when the work involved was not exclusively assigned to clerks notwithstanding the fact that the abolishment resulted in an increase in the volume of similar work performed by other crafts.

The following is quoted from Award 4759:

"The parties agree that the Carrier has the right to abolish a position when the work of the position has ceased to exist. Many Awards of this Board have held that a position may be abolished even though some of the work of the position remains, however, a substantial amount of the work must have ceased to exist. From the facts before us, it is our opinion that the Carrier was justified in abolishing the position in question by reason of the fact that more than a substantial amount of the work on the position had ceased to exist."

In the case covered by this Award the remaining work was assigned to persons not covered by the Agreement and the claim was denied.

Award 4939 approved abolishment of a position when work not exclusively assigned to clerks was transferred to other employees, and clerical work done on the abolished position was transferred to a supervisory position to which it was incidental. Particular attention to this Award is suggested because of points of similarity to the circumstances in the instant claims. It is obvious much of the work here involved is incidental to the work of other employees to which it was assigned at Paragould.

In Award 5127 we find the following:

"As an abstract principle, the decisions of this Board uniformly hold that where the work of a position remains, it may not be abolished, but if the work has disappeared in whole or to such extent as to leave nothing for the employee to do for a substantial part of his time for a reasonably sustained period, the position may be abolished. However, the Carrier may not, under the pretense of abolishing positions, evade the application of an established rule, nor take an undue advantage of the employees by discontinuing positions when there is a real necessity for their continuance."

This quotation fits the case here under consideration. There was no real necessity for the continuance of the Supply Department force.

In the case covered by Award 5719 the abolishment of a position was approved when the remaining work was not sufficient to occupy anywhere near the full time of the employee involved. That is the situation in the instant case.

Award 5999 approved an abolishment when the remaining work averaged 2.2 hours per day for 39 days out of a period of four months and the work did not exceed 3 hours on any day. The following is quoted from that award:

"Three hours a day are not a substantial part of an employee's time when he works eight hours per day."

There is not sufficient work remaining at Paragould to justify a full time position nor any Agreement requirement to maintain one. There is no requirement or authority for the payment of the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is here made that the respondent improperly abolished all positions within the Supply Department at Paragould,

Arkansas, and in contravention of Rules 1, 2, 3, 5 and 45 assigned the work accruing to this Department to employes not covered by the effective agreement bearing date of September 1, 1952.

The relief sought, in substance, is the restoration of a storehelper position; a joint check by the parties leading to a restoration of all duties which, it is alleged, were formerly performed by those attached to the Supply Department; together with reparations as set out in the claim above.

There is no doubt that conditions have materially changed at the point in question. The change from steam to diesel power has lessened the amount of Supply Department work. The petitioners admit this to be true, as evidenced by the fact that the re-creation of only one position is sought.

Respondent admits that some clerical work remains but submits that this work (in the amount of one hour daily) is of a nature as to be incidental to the duties of employes of the Mechanical Department.

Petitioner asserts that the various functions of the Supply Department have become disorganized and widely dispersed and contends that if reassembled would justify maintaining a storehelper.

An examination of segments of the work involved reveals that the loading of fuel oil from tank cars to storage tanks has never been performed by the Supply Department; that the loading and unloading of wheels was not the exclusive work of the Supply Department; and the delivery of ice by ice company employes is not improper.

Thus we are confronted with the question of whether or not the work remaining will justify supporting the claim here. The respondent asserts that only a small amount of work remains; this has not been successfully refuted by the petitioners.

We, therefore, cannot conclude that if a storehelper's position were created a substantial amount of his time would be required to perform the duties remaining to the position. (Awards 5719, 5999, 6342.)

The facts of the record will not justify a sustaining award.

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 carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1955.