

Award No. 7221
Docket No. CL-6814

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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. Carrier violated and continues to violate the controlling Agreement between the parties at LeRoy, New York, when effective with the close of business on October 13, 1951, it abolished a full time 8-hour scheduled position of Station Clerk, 73-1-486, and removed part of the remaining work assigned thereto from the scope and operation of the Agreement by reassigning parts of such work to the Agent and Operator-Clerk who are employees covered by the Telegraphers' Agreement.

2. That Carrier shall now compensate the former incumbent, Clerk R. B. Curry for one day's pay at the rate of his former position, namely \$13.35 per day, for each day on October 14, 1951, and subsequent dates that the violation continued, and further, claim to run until the condition is corrected by the Carrier returning the disputed work and assignment thereof to employees covered by the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: At the close of business on October 13, 1951, Claimant's position was discontinued, although there remained eight hours' work thereon, which was necessary to be performed. The locale of this dispute is LeRoy, New York, where the Carrier maintains a freight house operation for the benefit of its patrons in that vicinity. Prior to the date of this dispute the Carrier maintained the following positions at LeRoy, New York, Freight House and the duties assigned thereto are shown below:

NAME	TITLE	HOURS OF SERVICE	RATE OF PAY
T. E. Calahan	Agent	8:00 AM to 5:00 PM	\$ 2.316 per hour.
Frank Dornbrock	Chief Clerk	8:00 AM to 5:00 PM	14.15 per day.
R. B. Curry	Station Clerk	8:00 AM to 5:00 PM	13.99 per day.
Walter Davis	Operator-Clerk	7:30 AM to 3:30 PM	1.811 per hour.
Jos. McCauley	Operator-Clerk	3:30 PM to 11:30 PM	1.799 per hour.

DUTIES OF AGENT PRIOR TO OCTOBER 13, 1951

Handled station accounts.

Based on all that has been said hereinabove the Carrier submits the claim made here at parts 1 and 2 is completely without merit. Furthermore the Carrier asserts that this Division has no authority to make any order directly, or by indirection to issue any verdict, the net effect of which would be to compel the Carrier to establish position or positions where none now exists. The Carrier respectfully requests this Division to find this claim as being without merit and to deny it accordingly.

(Exhibits not reproduced.)

OPINION OF THE BOARD: Before considering this dispute on its merits, it is necessary to dispose of a motion in this docket to the effect that action be withheld pending the giving of notice of hearing to other parties involved.

In view of a number of awards of this Board and the decision of the Supreme Court of the United States in the case of Whitehouse vs. Illinois Central Railroad, and the finality of this matter (No. 131, October term of U. S. Sup. Ct., 1954) followed by the dismissal of the cause of action by the United States District Court, the Board now has jurisdiction over the only necessary parties to this proceeding and over the subject matter hereof. Prior Award 5759 of this Board was ill advised.

Claim is here made that the Respondent violated Rule 1(c)1 when, on October 13, 1951, the position of Station Clerk 73-1-486 was abolished at LeRoy, New York, followed by the alleged improper reassignment of a portion of the duties previously performed by the occupant of the Station Clerk position to employees not covered by the effective Agreement within the meaning of the said Rule.

Rule 1(c)1 of the effective Agreement provides as follows:

"Rule 1

"(c) When a position covered by this agreement is abolished, the work assigned to same which remains to be performed will be reassigned in accordance with the following:

"1. To position or positions covered by this agreement when such position or positions remain in existence at the location where the work of the abolished position is to be performed."

The Petitioners assert that positions of Chief Clerk and Station Clerk were established at LeRoy, New York, as early as 1948, and that while the position of Station Clerk was at one time abolished, the same was re-established on September 6, 1950, and was in existence subsequent to the time Rule 1(c)1 was placed in the Agreement, having so existed for more than one year continuously prior to the date the same was abolished on October 13, 1951, and that the duties remaining when the position was abolished were required to be reassigned (within Rule 1(c)1) to the position(s) remaining at the station which was covered by the effective Agreement rather than (as here) to the Agent, Operator-Clerk and Section Men.

The Respondent pointed out that the station force at LeRoy prior to September 9, 1950 consisted of a Chief Clerk, together with an Agent and two Operator-Clerks, which work force was later supplemented due to an increase in the over-all workload by an employee classified as Station Clerk whose duties were to assist the said four employees with the increased work; but that when the need for such employee (Station Clerk) ceased, the position was abolished, and the remaining work was performed as it had been in the past, by the same work force that had historically performed same.

It was asserted that the duties assigned to and performed by the Station Clerk position in question were never the exclusive work of Clerks and that

when the amount of such duties decreased, those duties remaining properly were assumed and performed by those from whom they (the duties) had initially flowed, for which reason no violation of the Agreement had occurred.

Rule 1(c)1 is clear and without ambiguity. In substance it provides that where duties of an abolished position remain, they (the duties) shall be reassigned to and performed by any employees (positions) remaining at the location where the remaining duties are to be performed. There remained the position of Chief Clerk at LeRoy to whom the Respondent might (and properly did) assign a portion of the remaining duties of the abolished position. The Respondent could not properly assign any portion of the remaining duties of Station Clerk to the Agent, Operator-Clerk or Section Men for the reason that Rule 1(c)1 is clear, concise and explicit in establishing criteria for the disposition and reassignment of work remaining in and to an abolished position.

As was stated in Award 3906, and sustained in Awards 5541, 6527, 6528 and 6529:

"At the location of this abolished position there were other clerical positions. As to this there is no question. Therefore, under the rule it became the duty of the Carrier, in order to conform to the rule to assign the work of the abolished position, if any remained, to those positions. . . ."

The penalty to be imposed for the violation of the Agreement must be for the improper abolishment of the position in question, and the claim here is valid as long as the violation continued.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated and the claim is sustained retroactive to October 13, 1951.

AWARD

Claim that the Agreement was violated sustained with the right of employee affected retroactive to October 13, 1951.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 2nd day of February, 1956.