

**Award No. 9219**  
**Docket No. CL-8208**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Roscoe G. Hornbeck, Referee**

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**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC  
RAILROAD COMPANY**

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

1. Carrier violated the Clerks' Rules Agreement when it abolished the Clerk's position occupied by employe D. J. Luby at Libertyville, Illinois and assigned the clerical duties which were a part of the position to the Agent and Operator.

2. The clerical work as it existed immediately prior to the abolishment of the clerk's position at Libertyville, Illinois be restored to employes covered by the Clerks' Agreement.

3. Employe D. J. Luby be compensated for all loss suffered as a result of the abolishment of the position retroactive to April 1, 1949.

**EMPLOYEES' STATEMENT OF FACTS:** For many years prior to April 1, 1949 there was in effect at Libertyville, Illinois a position of clerk to which position was assigned clerical work covered by the Clerks' Agreement.

On April 1, 1949 this clerical position was abolished and the clerical duties normally attached to the position were transferred to the agent and operator. At the time the clerk's position was abolished the regular occupant of the position was Donald J. Luby.

This grievance has been handled in the normal channel with various Carrier officers and appealed to the Assistant to the Vice President with whom several conferences have been held in an effort to dispose of the case.

pany alone required the greater part of the clerk's time. However, that plant was destroyed by fire during the latter part of 1948 and has not since been restored. Unfortunately, this business was lost to the Carrier. As between 1948 and 1949 the station earnings at Libertyville decreased approximately \$200,000.00. The less carload tonnage forwarded from Libertyville decreased 8,213,563 pounds in the year 1949 as compared with the year 1948. All of the work which the clerk performed in connection with the shipments of the Textile Company expired with the destruction of that plant and is no longer in existence.

The Carrier also wishes to direct attention to the fact that although the decline in station work eliminated the need for the station clerk on April 1, 1949, no question was raised by the employees until December 12, 1951, two years and eight months later. A formal claim was not presented until March 27, 1952 which was declined November 28, 1952 and over three years later the claim is presented to your Honorable Board. The claim is made retroactive to April 1, 1949, a period of approximately 6 years. In this regard we should like to quote the following from the Opinion of your Honorable Board in Award 6656:

"Moreover, decisions of this Board have gone so far as to deny claims for unreasonable delay in pressing them to a conclusion even though neither the Railway Labor Act nor the Agreement contains any cut-off or limitation provision (Awards 3778 (3 years), 4941 (3 years), 5190 (3 years) and 6229 (2 years)). The delay of 32 months here was unreasonable and the continuous running nature of the claim has made the delay prejudicial to the Carrier."

There has been no violation of the agreement as alleged by the employees and the claim is without merit. A serious injustice would be done to the Carrier were the decision in this case such as to cause the establishment of an unnecessary clerical position in the station at Libertyville. The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The claim is that the work of the Clerk assigned to Libertyville, Illinois prior to the abolishment of the position of Clerk at that station, was transferred to the Agent and Operator contrary to the Clerks' Rules Agreement.

Compensation is sought for Mr. D. J. Luby for all loss suffered by reason of the abolishment of the position and that payment be made retroactive to April 1, 1949.

At the outset, the Carrier asserts that the Claim should be dismissed because proceedings were not instituted with this Board in conformity to the requirement of Section 2 of Article V of the Agreement between the parties of August 21, 1954; that the last day upon which the appeal could have been perfected under this Agreement was January 1, 1956.

Notice of intention to appeal was filed with the Secretary of this Board on December 23, 1955. It recited an intention to file ex parte submission with this Division of the Board within thirty days on an unadjusted dispute between the Organization and the Carrier, followed by a detailed state-

ment of the Claim to be presented. The formal ex parte submission was filed on January 26, 1956.

The procedure here followed has been approved by this Board which has held that if the notice of intention, such as is found in this record, is filed within the time fixed by the Agreement of August 21, 1954, it clothes the Board with jurisdiction to entertain the Claim. Awards Nos. 7850, 8669 and 8764.

Prior to the abolishment of the Clerk's position at Libertyville, Illinois there were three employees at that station, an Agent, a First Operator and a Clerk. The Agent and Clerk, with the same hours of service, were located at the Freight Station, the Operator at the Passenger Station four blocks distant with the respective duties performed where the employees were stationed.

The Carrier asserts that since the abolishment of the Clerk's position all of the work which he had formerly done is now handled by the Agent at his station. This the Organization denies saying it has been informed that some of the work is done by the Operator. Neither statement is supported by more than the assertion of a party. In this situation for want of proof we can not find that any of the work involved was done by the Operator. It follows that the work in dispute must have been done by the Agent after the abolishment of the Clerk's position.

The question then to be determined is whether the work which was done by the Agent after the abolishment of the Clerk's position was the exclusive right of the Clerk to perform. This is the test that numerous Awards of this Board have applied. Awards 5318, 5662, 5867, 6393, 7387, 7784 and 8161.

During the period that the Clerk was on duty at Libertyville his work consisted, in the main, in handling shipments from a Textile plant at Libertyville which in 1948 was destroyed by fire and not rebuilt. From 1948 to 1949 the earnings at the Station at Libertyville decreased in the amount of \$200,000 and car load tonnage of freight shipments to the extent of 8,213,563 pounds. This reduction in the shipments from the station at Libertyville removed the greater part of the work which the Clerk had theretofore done. Nor does it appear, and this fact is decisive, that the work to be done while the Clerk was in service was performed exclusively by him but that it was done interchangeably with the Agent as incident to his other duties.

Thus, it appears that the release of the Clerk at Libertyville was an exercise of managerial prerogative and sound business judgment and was justified, unless it removed from the Clerks' Organization work which it was its exclusive right to perform.

We can not find from the facts developed in the record, that the Agreement was violated in the reduction of the force at Libertyville by relieving the Clerk from his assignment and in permitting the Agent to do the work remaining after the Clerk had been relieved.

A substantial question is raised as to compensation which could be awarded Mr. Luby, if the Claim were allowed, by reason of his termination of employment with the Carrier and forfeiture of his seniority rights. In view of our opinion on the merits of the claim we do not reach this question.

The Agreement has not been violated in the relieving of the Clerk from his assignment at Libertyville, Illinois on April 1, 1949.

**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 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: S. H. Schulty  
Executive Secretary**

Dated at Chicago, Illinois, this 4th day of February, 1960.