

Award No. 9395

Docket No. CL-8167

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Rules of the Clerks' Agreement when:

On May 31, 1955, it discontinued the only clerical position remaining at Live Oak, Florida, and assigned the work and/or duties of this position to a newly created position styled "Agent" which was created and established by Chief Dispatcher's bulletins #34 and #35, dated May 20 and 24, 1955, respectively, and which position is not covered by the Scope of the Clerks' Agreement.

That, as a penalty for the Agreement violation:

(a) Clerk T. L. Nelson (hereinafter referred to as Claimant) be paid for eight hours at the daily rate of the discontinued clerical position for June 1, 1955, and the same for each day, Monday thru Friday, subsequent thereto.

(b) That Claimant be paid for eight hours at the punitive rate of the discontinued position for each and every Saturday subsequent to June 1, 1955.

(c) That Claimant be paid mileage on a round trip basis between Live Oak and Lake City, Florida, at the rate of 5½ cent per mile for June 1, 1955, and the same for each and every subsequent day that he works at Lake City where he was forced to exercise seniority on account of said discontinuance.

The foregoing claims are filed on a continuing basis until the violation is corrected by returning the work to the discontinued clerical position.

EMPLOYEES' STATEMENT OF FACTS: The passenger and freight stations at Live Oak, Florida are in separate buildings approximately 200 yards apart. All telegraphic facilities are located in the passenger station. There is two employes at the passenger station both of whom are covered by the Telegraphers' Agreement. One, is classed as a Ticket Agent-Operator and is

authorizing payment as claimed here can be found in the Agreement itself, this Board cannot read into it such a meaning.

"In Award 2491, this Board said: '* * * We can only interpret the contract as it is and treat that as reserved to the Carrier which is not granted to the employees by the Agreement.' See Awards 4304, 2622, 5307. Any change to be made in a contract to meet a condition as here present is a matter for negotiation between the parties. We can neither legislate nor can we write into the Agreement that which is not there."

Third Division Award 6007:

"In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' agreement as they are written. It is not our privilege or right to add thereto. See Award 4435." (Emphasis added.)

Rule 77 provides that:

"Employee exercising seniority rights to new positions or vacancies which necessitate a change of residence will receive free transportation for themselves, dependent members of their family, and household goods when it does not conflict with State or Federal laws, but free transportation of household effects under this circumstance need not be allowed more than once in a 12-month period."

The claimant has not called upon the Carrier to transport his household goods or furnish free transportation for himself and dependent members of his family. The agreement does not grant Carrier the right to arbitrarily move his residence from Live Oak, Fla. to Lake City, Fla. or any other point.

There is no merit to the claim and we urge that it be denied.

Carrier affirmatively states that all data used herein has been discussed with or is well known by the Organization representatives. (Exhibits not reproduced)

OPINION OF BOARD: At Live Oaks, Florida, Carrier maintained separate passenger and freight stations some two hundred yards apart. All telegraphic facilities were in the passenger station where two employees under the Telegraphers' Agreement handled all telegraphic and train order work and all clerical work in connection with the passenger operations.

At the freight station for several years the employees consisted of two clerks, who performed all the clerical duties, and a supervisory station agent whose duties were solely supervisory and who was not under either the Clerks' or Telegraphers' Agreement. Due to decreasing business one of the clerical positions was abolished and all clerical duties were performed by claimant, who occupied the remaining clerical position. Effective May 31, 1955 Carrier abolished both claimant's position and that of the supervisory station agent and established in their stead the one position of agent, under the Telegraphers' Agreement.

It is not shown that any supervisory duties remain at the freight station and all telegraphic work was performed out of the passenger station so it would appear that all the duties of the newly established agent's position

were duties which had previously been performed or could have been performed by claimant. In substance claimant's position was taken out from under the Clerk's Agreement and put under the Telegraphers' Agreement.

True, as asserted by Carrier, a telegrapher may perform clerical work incidental to his position, but here there was no telegraphic work to which it could be incidental. Carrier stresses the fact that in similar situation from 1932 to 1936 the agent at this station performed the clerical work, but even if the situation was the same that was prior to the amendment of the agreement in 1954 which specifically superseded all rules and interpretations thereof not included therein.

It is further urged that it has been the practice on this property to assign to agents or to telegraphers all necessary clerical work to fill out their assignment or incident to their assignment. Here it is not shown that there was any proper agent's or telegrapher's assignment to be filled out. We think Carrier might not properly divide the work at Live Oak so that only clerical duties remained at the freight station and claim it to be a one man station to justify assigning an agent there under the Telegraphers' Agreement to perform the clerical duties there.

Carrier contends that any monetary award would constitute a penalty which the Board is not authorized to assess, for the reason that claimant immediately exercised his seniority on another position at the same daily rate of pay and elected to commute from Live Oak. The Organization answers:

"We have asked that claimant be made whole * * * On account of Carrier's arbitrary and unilateral action Claimant was forced to exercise his seniority at a point 25 miles from Live Oak and commute daily rather than sacrifice his investment in real property at Live Oak where he had worked for many years."

Claimant was entitled to the position at Live Oak where he had his residence and we think he should be made whole for his necessary additional time and expense in commuting to the position at Lake City, and we so find:

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.

AWARD

Claim sustained to the extent and in accordance with the opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary