

Award No. 9685
Docket No. CL-9431

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD COMPANY
EASTERN DISTRICT (except Boston Division)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, New York Central Railroad Company, Eastern District, (except Boston Division):

1. — That Carrier violated the Clerks' Agreement, effective February 11, 1955, when without conference or agreement with the Committee, it abolished the position of Clerk, rate \$296.73 per month, at its Passenger Station, St. Johnsville, N. Y., held by Mr. H. L. Frye, and assigned the work of this position to an employee holding no seniority rights under the Clerks' Agreement and who is subject to a different agreement.

2. — That Carrier be required to restore this position and fill it as provided in the Clerks' Agreement.

3. — That Mr. H. L. Frye, together with any and all other clerical employees adversely affected by the aforesaid violation of the Clerks' Agreement, be reimbursed in full for wage losses resulting therefrom, this reimbursement to cover period commencing February 11, 1955 and continuing until the above position shall have been so restored and filled.

EMPLOYEES, STATEMENT OF FACTS: The Carrier has a Freight Station and a Passenger Station at St. Johnsville, N. Y. Both stations are open to the public only Monday through Friday and they are located approximately 1000 feet from each other on opposite sides of the main line right of way.

Prior to February 11, 1955, the force at these stations consisted of:

1 Agent (under the Telegraphers' Agreement), hours of service 8 A. M. - 5 P. M. with one hour meal period, Monday through Friday working at the Freight Station.

Agreement, which procedure has been recognized by your Board as entirely proper under the doctrine of "ebb and flow".

OPINION OF BOARD: After abolishment of the clerical position involved herein on February 11, 1955, the Agent did not perform any duties that he had no right to perform in filling out his tour of duty; in the latter regard Awards 9329 and 9330 are controlling in that they involve the same Parties and Agreement involved here and in that there are no sufficient distinctions between the present case and the cases covered by those Awards to justify the Board in now reaching a result different from that reached there. Also see Awards 4348 and 5803. Moreover, the doctrine of "flow and ebb" applies under the facts of the present case.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of December, 1960.