

Award No. 10067

Docket No. CL-9423

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

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

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

1. Carrier violated and continues to violate the Clerks' Rules Agreement when it abolished Caller-Clerk Position No. 43, at Nahant, Iowa and turned some of the work and duties, which were a part of that position, over to the Roundhouse Foreman and others who are employees outside the scope and application of that Agreement.
2. Carrier shall now be required to return the work which was a part of Caller-Clerk Position No. 43, now being performed by the Roundhouse Foreman or others outside the scope and application of the Clerks' Rules Agreement in Seniority District No. 56.
3. Carrier shall compensate A. H. Tubbs and all other employees in Seniority District No. 56 affected directly or indirectly as a result of the abolishment of Caller Clerk Position No. 43 for all loss suffered from September 1, 1955 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On August 26, 1955 Division Master Mechanic W. W. Henderson issued Clerks' Notice No. 2 to all clerical employees in Seniority District No. 56 abolishing Caller-Clerk Position No. 43 at the Nahant Roundhouse, Nahant, Iowa, effective September 1, 1955. The regular occupant of the position was Arba H. Tubbs.

On August 30, 1955 Superintendent J. T. Hayes issued the following Bulletin:

**"THE MILWAUKEE ROAD
Dub-Ill. Divn.**

NOTICE — NO. CF-108

Superintendent's Office

**Savanna—Aug 30, 1955
T-15-b**

**ENGINEERS & FIREMEN
NAHANT, IA.**

Effective Sept. 1, 1955, the calling of enginemen at NAHANT, IOWA, will be handled by the roundhouse office at Savanna, Illinois.

outside of the assigned hours of the Caller-Clerk on weekdays was performed by the Roundhouse Foreman.

However, as indicated above, we feel the important fact is that all work of the Caller-Clerk position had either expired, was eliminated entirely or transferred to employees at Savanna who are covered by the scope of the Clerks' Agreement and in the same seniority district and we maintain there has been no violation of the schedule rules through the abolishment of the unnecessary Caller-Clerk Position.

We respectfully request that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The instant claim is based on Petitioner's contention that Carrier abolished Caller-Clerks Position No. 43 at the Nahant, Iowa, Roundhouse and thereafter assigned a substantial part of the duties belonging to that position to the Roundhouse Foreman. The latter position is clearly excepted from the Clerks Agreement and this Referee would sustain the claim if Petitioner's contention were supported by the record. See Awards 6284, 8234, 8673. Otherwise, the protection and security afforded employees and the work content of their positions by a collective bargaining agreement would be, to a considerable extent, illusory.

However, before we properly may begin to give practical effect to principles and awards, a situation to which they can apply must be established by affirmative proof. In the present case, that necessary evidence is absent. For example, there is not a scintilla of proof to support Petitioner's assertions that such major functions of the abolished position as calling engine crews, handling layoffs and displacements and drawing off figures from shop time slips were transferred to employees outside the Clerks' Agreement. This lack is all the more noteworthy in view of Carrier's specific denials. We are not in a position to consider either the Foreman's Statement offered by Carrier or the Engineers' Statements attached to Petitioner's Ex Parte Submission since they were not presented on the property. See Awards 8484, 8567, etc.

It does appear that, after the Caller position was abolished, the Roundhouse Foreman marked up the train board, receipted and posted Superintendent's bulletins and answered the telephone and correspondence. However, Petitioner fails to show how much time was devoted to those duties although Carrier states that the Foreman spends only five minutes monthly in marking up the board and a like number of minutes daily in receipting and posting the bulletins. We regard any such working time as inconsequential for purposes of this claim and not a threat to a position or collective bargaining agreement.

As to the answering of telephones and correspondence, Carrier maintains that the Foreman always had performed those duties as a normal incident of his position; we considered this argument reasonable in the light of the nature of the work and the absence of any showing by Petitioner of volume and Claimant's specific responsibilities with respect to these functions.

The requirement of proof exists for the protection of both parties as well as the Board. Properly viewed, it is not unreasonable or unduly burdensome. If a claim is sufficiently important to warrant this Board's consideration and critical facts are in dispute, it is certainly incumbent upon the claimant to

produce sufficient evidence to support his version of the facts on which he relies. We appreciate that it is sometimes difficult in these situations to obtain evidence and our demands are tempered by that consideration. It is not necessary that the proof comply with technical formal requirements or that its volume be great but it should be sufficiently specific and ample to establish the claim and enable the Board to resolve the conflicts.

The requirement as well as the principle that the Board will not consider evidence that has not been brought forward on the property have long been established and recognized and there should be no confusion in their regard. Limited as we are to a consideration of the record, the point sometimes made that "anyone who has ever worked on a railroad knows that we are right" lacks good faith and cannot be accepted as a substitute for proof.

In our opinion, Petitioner's case must fail since it is not supported by the record. This result is not affected by Carrier's refusal to make a joint check of the facts. While such refusal may be important in solving conflicts in evidence, it is not sufficient to overcome a lack of proof. See Award 4939.

The Claim will be denied.

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

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 13th day of September 1961.