

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

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

THE ATLANTIC AND DANVILLE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4913) that,

(a) The Carrier violated the Agreement when the Clerk's position at Franklin, Virginia, was abolished, effective June 3, 1960, and the work attached thereto was assigned to a position classified as Clerk-Telegrapher.

(b) The clerical position at Franklin, Virginia, shall be re-established and Claimant, Mr. M. W. Woodruff, former occupant of the position, assigned thereto and compensated for all monetary loss suffered.

EMPLOYEES' STATEMENT OF FACTS: 1. Mr. Woodruff has a seniority date of September 9, 1918, as a Group 1 employe.

2. Bulletin No. 26 dated May 31, 1960, issued by Mr. W. H. Flowers, Chief Operating Officer, abolished the position of Clerk at Franklin, Virginia, effective June 3, 1960. (Employes' Exhibit "A")

3. To assure continuity of the service performed by Mr. Woodruff on his clerical position the Carrier issued Bulletin No. 29 dated June 6, 1960, advertising a position not covered by the Clerks' Agreement. The so-called new position carries the title of Clerk-Telegrapher and is also located at Franklin, Virginia. The work week of the Clerk-Telegrapher position is Monday through Friday with assigned hours of 8:00 A.M. to 5:00 P.M. (Employes' Exhibit "B"). This Clerk-Telegrapher position was assigned to F. J. Osborne by Carrier's Bulletin No. 36. (Empolyes' Exhibit "C").

4. In addition to the Clerk-Telegrapher position that was created to replace the Clerks' position there is an Agent-Operator position at Franklin, Virginia. The Agent-Operator performs clerical and telegraphic work. The Agent-Operator position is covered by Carrier's Agreement with The Order

Telegrapher, but this rule should not be extended to the point where a full time clerical position can be abolished and his work assigned to a Telegrapher where in the same office the Telegrapher or Agent can render such telegraphic duties as the Carrier may require."

It is affirmed that all data herein submitted in support of claimant's position have been submitted in substance to the Carrier and made a part of the claim.

(Exhibits not reproduced.)

POSITION OF CARRIER: It is the position of the carrier that due to its financial position, it was necessary to make this change in order to release the Agent for other duties necessary for the efficient operation of this station and for the purpose of increasing revenues, and meet competition. It is unfortunate that the Clerk was not qualified to perform the telegraph service and that the two positions are not represented by the same labor organization which make the claim a jurisdictional matter.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim arises as a result of Carrier abolishing the position of Clerk at its station at Franklin, Virginia and concurrently establishing the position of Clerk-Telegrapher. Immediately prior to the time this action was taken, the station force at Franklin consisted of one Agent-Telegrapher and one Clerk. The clerical position abolished was subject to and came under the provisions of the Agreement of these parties, effective April 1, 1957.

Firstly, we are required to address ourselves to the issue raised by Carrier as to whether a jurisdictional dispute is involved. We do not consider this to be a jurisdictional dispute. Award 5432. The record shows that the telegraphers were notified of this proceeding and that the Order of Railroad Telegraphers declined the opportunity to participate herein.

Turning to the merits of the Claim before us, it is noted that the material facts are not in dispute. It is agreed that at the time the above change was made, business at the Franklin station was increasing; that the abolished position of Clerk was a full-time job; and that the change effected by Carrier was not due to an ebb of clerical work. Carrier alleged that it took the complained of action for the purpose of promoting the efficiency of the station. The duties formerly performed by the Clerk were distributed between the positions of Agent-Telegrapher and said newly created position. It appears from the standpoint of time involved that approximately 90% of the work of the new Clerk-Telegrapher was clerical in nature.

We are concerned with whether Carrier violated the scope rule of the Agreement, and Rule 35 (d) of the Agreement:

"Except as otherwise provided in these rules, established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

Much has been written in reference to the scope rule of the Clerks' Agreements (the one here involved being general in nature). In the last two

decades, the Board has spelled out exceptions to the rule, e. g., it has held consistently that all clerical work is not the exclusive property of the Clerks; however, it appears from a study of some ninety Awards that work of a class covered by an Agreement belongs to those for whom the contract was made, and that whatever if any exceptions exist will fall into one or the other of two classes — (a) those directly expressed in the exceptions to the scope rule of the schedule and (b) those which may be definitely demonstrable extraneously.

Awards 615 and 636 (both cited to the referee) help clarify issues arising in cases such as the one at hand. In regard to the (b) type of exceptions referred to above, Referee Swacker, in Award 615, stated:

“* * * In the last class of cases, however, the Board should be extremely slow to find existence of such exceptions and only upon unmistakable proof * * *” (Emphasis supplied);

and in Award 636, he referred to prior Award 615 as follows:

“There was no shadow of proof nor of thought in that case that a telegrapher may be detached from his post and sent a mile away to an entirely unrelated location to take over a half a day of straight clerical work to facilitate the abolition of a clerical position * * *”;

and in Award 29 of Special Board of Adjustment No. 170 (Referee Sharpe), we find the following persuasive statement:

“Many awards have held that in the interest of economy the Carrier may abolish a clerical position and assign the remaining work to a telegrapher, but this rule should not be extended to the point where a full-time clerical position can be abolished and his work assigned to a telegrapher, where in the same office the telegrapher or agent can render such telegraphic duties as the Carrier may require * * *”

Whether Rule 35 (d) was evaded is a close question; however, we believe that the end result of Carrier's action here achieved circumvention of the rule.

In consideration of the confronting facts and the Awards cited by and in behalf of the parties, we believe Carrier violated the Agreement. In this factual setting, a full-time agreement covered clerical position cannot be properly abolished by the moving in of a telegrapher, who, in combination with another telegrapher, “fill out time” by jointly assuming and absorbing the work of the unilaterally abolished clerical position.

Remaining for consideration is the remedy to be applied.

It was urged in behalf of Carrier that, in any event, **“* * * this Division will not order the re-establishment of positions * * *”** Some forty Awards were presented by and in behalf of the parties in regard to this point; and having examined these, it appears that the Board usually declines to grant that type of relief to successful claimants.

We agree with Carrier's contention that it is entitled to consider Claimant's earnings in computing his loss; however, this portion of the Claim asks

only that Claimant be "compensated for all monetary loss suffered," i. e., as we interpret same, that he be "made whole." Restitution should be made for his net financial losses resulting from the said contractual violation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated the Clerks Agreement in the premises.

AWARD

Claim (a) sustained.

Claim (b) sustained, except that part which asks that Carrier be directed to re-establish the abolished position.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.