

**Award No. 10853**

**Docket No. CL-10229**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Raymond E. McGrath, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES  
THE WESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** This is a claim of the System Committee of the Brotherhood that:

(a) The Carrier violated and continues to violate the rules of the Clerks' Agreement through its unilateral action, beginning about April 1956, in removing work from the position of Cashier at Lyoth Quartermaster Depot and thereafter permitting or requiring that work to be performed by an employe outside the scope of the Clerks' Agreement, and that

(b) Mr. J. M. Rustan, occupant of the position of Cashier at Lyoth Q. M. Depot, and his relief or successor, is entitled to and shall now be compensated for eight hours for each day of the violation, beginning June 23, 1956, and continuing until the violation is corrected and the work returned to employes within the scope and operation of the Clerks' Agreement.

**NOTE:** The names of the persons relieving Mr. Rustan, and those succeeding him on position of Cashier, Lyoth Q. M. Depot, to be determined by a joint check of the Carrier's timesheets, payrolls and/or other records.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier has maintained an agency at the Lyoth Quartermaster Depot (herein referred to as the Lyoth Q. M. Depot), Lyoth, California, since July 1, 1944, where one or more employes under the Clerks' Agreement, and an Agent not covered thereby, have been employed continuously, except for two short periods during 1948-1949, when the clerical position was abolished.

The first such abolishment, effective February 14, 1948, resulted in a dispute that was submitted to your Honorable Board in Docket CL-5763, and by reference thereto the information in that docket is made a part hereof. Award No. 5790, rendered in that Docket, upheld the contention of the Organization that work performed by employes under the Agreement cannot be removed therefrom and assigned to employes not covered thereby.

As stated in Carrier's Statement of Facts, Carrier's position in the instant claim is the same as its position in Docket CL 8536 and for reasons stated therein, Carrier urges your Board to deny the instant claim in its entirety.

In addition, without prejudice to the above stated position, it is noted that in the present claim the Organization is demanding compensation to the extent of "... eight hours for each day of the violation ..." whereas in Docket No. CL-8536 the Organization demanded compensation at the overtime rate equivalent to "... all time consumed by the Agent ... in performing clerical work ...". The compensation demanded in the instant case is thus completely inconsistent with that demanded in the same claim now before your Board in Docket CL-8536 and furthermore, both are wholly out of line with the holding of your Board in Award 5790 which awarded compensation on the following basis:

"Nor is the Claimant, or any other employee who has been adversely affected thereby, necessarily entitled to all monetary loss he or they may have suffered as a result of the position being abolished. His or their claim for compensation must necessarily be limited to the extent of compensation for the work which the agent has actually performed since February 16, 1948, which immediately prior thereto was being performed by the occupant of the position of General Clerk. To that extent the claim is allowed but otherwise denied."

All of the above has, in substance, been discussed with the representative of the Organization.

**OPINION OF BOARD:** At the outset Carrier raised objection that a third party notice under Section 3, First (j) of the Railway Labor Act was not given. Such notice has been given. The statute has been complied with and the Carrier has withdrawn the objection.

This claim concerns performance of certain clerical work by the Agent at Lyoth Quartermaster Depot and asserts that the Carrier has unilaterally removed work from the Claimant which is properly his.

This is the third time that a similar set of facts involving the same parties at the Lyoth Quartermaster Depot near Lyoth Station in California has been before this board. The issues presented in Docket No. CL-5763, were decided by Referee Wenke in Award No. 5790 dated May 23, 1952. The issues presented in Docket No. CL-8536 were decided by Referee Grady in Award No. 9476 dated June 28, 1960.

Since both parties in this case have included the record in the former case (Award No. 9476) as it applies to this case, as part of their submissions in this case, we will not cover facts or discussions in this award which would be repetitive, of facts and discussions in the former case.

The Award No. 9476 reads in part as follows:

"A brief statement of the background of this dispute is in order.

"A joint check on February 6, 1946 showed the Agent at Lyoth to be performing certain clerical work. On February 16,

1948, the last remaining clerical position at Lyoth, namely "General Clerk" was abolished and thereafter the Agent did all the clerical work. A claim was submitted, Docket CL-5763 and sustained in Award No. 5790 on May 23, 1952. Re-establishment of the abolished position was not directed.

"The affected employee in that case, is the Claimant here.

"The abolished position was re-established on January 17, 1949, as 'Cashier-Clerk' and Claimant was assigned to it.

"On July 2, 1954, the parties composed their differences concerning Award No. 5790. Claimant received pay for the period during which the position had been abolished. It was agreed that matters would remain in status quo and that Rule 40 (f) would govern 'the Lyoth situation in the future'. Rule 40 (f) provides for allocation of clerical work when a clerical position is abolished and for revival of abolished positions.

"The instant claim was filed on December 12, 1954, asserting that Claimant should have been used on an overtime basis to perform the clerical work being done by the Agent. A joint check on January 24, 1955, resulted in agreement that the position of Cashier-Clerk could not be abolished.

"The previous controversy involving abolishment of the position was disposed of on July 2, 1954. Rule 40 (f) invoked in support of this claim has no application for the revived position has not been abolished. **The Rule cannot become applicable unless and until the position is again abolished.**" (Emphasis ours.)

The record in the case before us does not disclose that the position has been abolished.

There is a factual question raised in this record. The Carrier asserts that "The Agent and the Claimant had set up a method of performing the station work which operated to their mutual satisfaction." The Claimants vigorously deny that the work involved in the dispute was voluntarily turned over to the Agent by the Claimant. The letter of Claimant J. M. Rustan dated June 6, 1956 reads in part as follows: ". . . About ten days ago, he (the Agent) gave me strict orders to discontinue performing the following duties:" (Here follows a list of the duties involved in this case). This letter does not indicate mutual agreement. But in view of the fact that the position has not been abolished it is not necessary to resolve this factual dispute here.

The Carrier contends that it is unrealistic for the Claimant to say that the Agent at the Lyoth Quartermaster Depot cannot now perform clerical work incident to his assignment even though he has done so over the years. We agree with the Carrier on this point. We hold that the work involved here is not exclusively reserved to Employees covered by the Agreement.

We agree with the findings of this Board as set out in our Award No. 9476 and can see no reason after a careful examination of this record why the same conclusion should not be reached in the case before us.

And as stated in that case the previous controversy involving abolishment of the position was disposed of on July 2, 1954. Rule 40 (f) invoked in support of this claim has no application for the revived position has not been abolished. The Rule cannot become applicable unless and until the position is again abolished.

The claim is without merit and 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

The claim is without merit and will be denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of October 1962.