

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

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

THE DELAWARE AND HUDSON RAILROAD CORPORATION

CLAIM NO. 1

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated, and continues to violate the current Clerks' Agreement, when on and since July 20, 1954, it abolished Position No. 3, Clerk, Carbondale Coal Billing Station, while all the duties and responsibilities thereof remained to be performed and further violated the said Agreement by assigning the said duties and responsibilities to non-employees of the Carrier (Weighmasters at Hudson Coal Company breakers), and to an employe not subject to the scope and application of the Clerks' Agreement (Coal Billing Agent, J. Giblin), and that

(a) Position No. 3, Clerk, Carbondale Coal Billing Office, shall be re-established and the last occupant thereof (Mr. Harold W. Reynar) restored thereto without monetary loss, and that

(b) All other employes who have suffered monetary loss by virtue of this violation, either through displacement or otherwise, shall be fully compensated.

CLAIM NO. 2

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate the current Clerks' Agreement when, on and since July 20, 1955 it abolished Position No. 2, Clerk, Carbondale Coal Billing Station, while all the duties and responsibilities thereof remained to be performed and further violated the said Agreement by assigning the said duties and responsibilities to non-employees of the Carrier (Weighmasters at Hudson Coal Company Breakers) and to an employe not subject to the scope and application of the Clerks' Agreement (Coal Billing Agent, J. Giblin), and that

(a) Position No. 2, Clerk, Carbondale Coal Billing Office, shall be re-established and the last occupant thereof (Mr. Claude Rehkop) restored thereto without monetary loss, and that

(b) All other employees who have suffered monetary loss by virtue of this violation, either through displacement or otherwise, shall be fully compensated.

CLAIM NO. 1

EMPLOYEES' STATEMENT OF FACTS: Prior to July 20, 1954, there existed, among five (5) others, a position designated as Clerk in the Coal Billing Office, Carbondale, Pa., which was regularly assigned to Clerk Harold W. Reynar, working hours 8:00 A. M. to 4:00 P. M., daily, except Saturday and Sunday, at a rate of \$273.15 per month; the duties and responsibilities of this position were as follows:

1. Check all orders received from Hudson Coal Company with report made out by clerks on night shift; checking order numbers with report; checking Shipper and Consignee; routing, rates and freight charges.
2. Filing the orders; putting carbon between sheets (average carbons were from 300 to 500 per day); pinning sheets together prior to putting carbons in (sheets pinned together averaged from 9 to 12 in each set; sets would average from 90 to 210 per day).
3. Billing coal received from Duffy's Field and also cars that orders were received from Hudson Coal Company during day.
4. Separating waybills according to Colliery and in numerical order so that they could be checked with Breaker Sheets received from Hudson Coal Company.
5. Billing all "Hold" Coal released during the day by The Hudson Coal Company.
6. Check waybills against reports.
7. Other clerical duties incidental to the position.

Subsequent to the abolishment of Position No. 3, Clerk, Carbondale Coal Billing Office, the duties and responsibilities of this position, as listed above, have been assigned to non-employees of the Carrier (Weighmasters at Hudson Coal Company breakers), and to an employee not subject to the scope and application of the Clerks' Agreement (Coal Billing Agent, J. Giblin).

This case is exactly the same as Case 9:46-C, filed with Mr. F. L. Hanlon, then Assistant to General Manager for Personnel of D. & H. R.R. Corp., on November 20, 1946 (abolishing two positions of clerk in Coal Billing Office at Carbondale, Pa. and assigning the duties and responsibilities thereof to employees of the Hudson Coal Company, who were not covered by Clerks' Agreement).

Under date of March 24, 1947, the following received from Mr. Hanlon:

Agent J. Giblin) performed some of the duties of the abolished positions, attached marked Exhibit "A" is statement of former Coal Billing Agent James Giblin in connection with abolishment of positions in the Coal Billing Office. It will be noted that Mr. Giblin states that the work performed by him has not changed since he became Coal Billing Agent in 1945. Mr. Giblin retired January 15, 1958.

It will be noted that the claim in this dispute involves request that two positions be re-established. Even in cases where a violation of the agreement has been found in the assignment of work, it being the carrier's position that no such violation can be found in the instant dispute, the Third Division has recognized that it has no authority to require a carrier to establish or re-establish a position. See the following awards:

Award 3906, Referee Yeager — "In this docket, as was true in Award 3583, it must be said that it is not within the province of this Division to require restoration of a position, but it becomes apparent that the Carrier is confronted with the alternative of either restoring the position or assigning to Clerks the clerical duties formerly performed in the abolished position and now being performed by the Ticket Agent in order to escape the penalty for continuing violation."

Award 7168, Referee Carter — "It is not the function of this Board to order the Carrier to restore the work to any particular position. That is the prerogative of the Carrier. We can only find that there was a violation and direct the payment of penalties as long as the violation continues."

Award 7349, Referee Coffey — "As a general proposition, though, the Carrier's right to abolish positions under the Agreement when no longer needed in its service due to a disappearance of the work for which created is absolute. See Awards 4446, 4849."

Award 7478, Referee Smith — "While we have found that the work in question came within the scope of the agreement, this Board is without authority to re-establish the abolished positions. Any determination of the manner in which this work is to be performed rests with the Respondent."

It is the carrier's position that — (1) the claim is barred because of failure of the employees to handle it in accordance with the time limit provisions of the Handling Claims and Grievances Rule; and (2) if for any reason claim is decided on its merits, it should be denied because no work has been removed from the scope of the Clerks' Agreement.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The case, in this instant, is based on the claim by the Organization that the Carrier violated and continues to violate the current Agreement when on and since July 20, 1954 the Carrier abolished Position No. 3, Clerk, Carbondale Coal Billing Station. The last occupant

of Position No. 3 was Mr. Harold W. Reynar (Claim No. 1) and on July 20, 1955 the Carrier abolished Position No. 2, Clerk, Carbondale Coal Billing Station. The last occupant of Position No. 2 was Mr. Claude Rehkop (Claim No. 2). Further that the duties and responsibilities of the abolished two positions were assigned to "non-employees of the Carrier (Weighmasters at Hudson Coal Company breakers), and to an employee not subject to the scope and application of the Clerks' Agreement (Coal Billing Agent, J. Giblin)." Also in Claim No. 1 (b) and Claim No. 2 (b) the Organization makes claim for "All other employees who have suffered monetary loss by virtue of this violation, either through displacement or otherwise, shall be fully compensated."

The Organization contends that Case No. 9.46-C was exactly the same as the case with which we are confronted.

"This case is exactly the same as Case 9.46-C, filed with Mr. F. L. Hanlon, then Assistant to General Manager for Personnel of D. & H. R.R. Corp., on November 20, 1946 (abolishing two positions of clerk in Coal Billing Office at Carbondale, Pa. and assigning the duties and responsibilities thereof to employees of the Hudson Coal Company, who were not covered by Clerks' Agreement).

"Under date of March 24, 1947, the following received from Mr. Hanlon:

**'THE DELAWARE AND HUDSON RAILROAD
CORPORATION**

'OFFICE OF GENERAL MANAGER

'ALBANY 1, NEW YORK

**'F. L. Hanlon
Assistant to General Manager
for Personnel**

**'March 24, 1947.
'Case No. 9.46-C**

'Subject: Claim of the System Committee of the Brotherhood that Carrier violated the current Clerks' Agreement when on October 20, 1946 two (2) positions designated as Clerks in the Coal Billing Office at Carbondale, Pa. were abolished and all the duties and responsibilities thereof were assigned to employees of The Hudson Coal Company and that

'(a) The two (2) abolished positions shall now be restored to the scope and application of the current Clerks' Agreement, and that

'(b) All employees who suffered monetary loss by virtue of the violation shall be fully compensated.

'Decision: Positions No. 7 and No. 3 in the Carbondale Coal Billing Office have been

re-established and employes removed therefrom October 20, 1946 will be reimbursed for any loss in earnings suffered by reason of being removed from these two positions.

's/ F. L. Hanlon
'Assistant to General Manager''

The Carrier's response to this matter is that Case No. 9.46-C was settled in 1947 and denies that the facts involved in Case No. 9.46-C were in any way similar to the facts in this case. We are limited in that we do not have any information regarding Case No. 9.46-C other than the reproduced material above which is not adequate regarding pertinent facts upon which we could form an opinion regarding the contradictory contentions of the parties on this matter.

The Carrier contends, and it has not been disputed, that early in 1954 a survey was conducted of the activities and functions of the Coal Billing Office at Carbondale, Pennsylvania. The survey revealed that outmoded methods were being used, for example, the hand insertion of approximately 800 sheets of carbon paper per working day. Also that certain forms which were being prepared could be eliminated and that an I.B.M. Billing Machine, when used in conjunction with a revised form would further reduce the clerical work involved at this office. The Carrier, further contends, that all the clerical Employees in this office did substantially the same work. The specific forms abolished were Form 1821 and Form 1561.

On July 8, 1954 the Superintendent of the Pennsylvania Division Mr. M. J. McDonough, advised the General Chairman of the Clerks Organization that Position No. 3, Clerk, would be abolished July 21, 1954.

Claim No. 1 of this dispute which is based on the abolishment of Position No. 3, Clerk, Carbondale Coal Billing Office, was first presented to the Carrier on May 17, 1956.

On July 8, 1954 Superintendent M. J. McDonough wrote to the General Chairman K. D. Shaw, as follows:

"Carbondale, Pa. July 8, 1954

"Mr. K. D. Shaw
General Chairman, BRS&C
Hotel Ten Eyck
Albany, N. Y.

"Dear Sir:

"In accordance with Article 4, Rule 44-A, of the Clerks' Agreement, due to the closing of certain collieries and the abolishing of forms, resulting in a reduction in the amount of work, the position of Clerk No. 2, Carbondale Coal Station, (hours of service 8:00 AM to 4:00 PM daily except Saturday and Sunday), will be abolished, effective at 4:00 PM, July 20, 1954. The work remaining will be absorbed by Positions 3, 4, 5, 6 and 7.

"Effective July 21, 1954, the hours of position of Clerk No. 7 (now working from 7:00 PM to 2:00 AM) will be changed to 4:00 PM to 11:59 PM, with Saturdays and Sundays as days of relief.

"Yours truly,

"/s/ M. J. McDonough
Superintendent"

On July 14, 1954 the General Chairman responded to the July 8, 1954 letter, above reproduced, as follows:

"July 14, 1954
Case No. 9:46-C

"REGISTERED RETURN
RECEIPT REQUESTED

"Mr. M. J. McDonough, Superintendent
The Delaware and Hudson Railroad Corpn.
Carbondale, Pa.

"Dear Sir:

"This will acknowledge receipt of your letter of July 8th in connection with abolishing Position No. 2 in the Coal Billing Office at Carbondale, Pa.

"Your reference to Article 4, Rule 44(a) of our current Agreement indicates you are aware of the existence thereof but your method of procedure indicates either that you have failed to read the Rule or that you have decided to ignore its requirements. I refer you specifically to the last sentence of Rule 44(a) reading:

'Should a position be abolished the remaining duties shall be reassigned and rated through negotiations between the Management and the General Chairman.'

"The procedure followed by you; namely, through your above referred to letter and the issuance of your Bulletin No. 19:54 issued under date of July 9, 1954, constitutes unilateral action on your part in direct violation of the requirement for negotiations to accomplish the abolishment of a position.

"In view of the foregoing and the fact that work properly belonging to employees of our Craft or class and covered by our Case No. 9:46-C is still being performed by employees of the Hudson Coal Co. it is necessary for me to advise you that we not only reject your proposal to abolish Position No. 2 but that we insist that all work properly covered by our Agreement be promptly restored to the employees covered thereby.

"Therefore we request that your Bulletin No. 19:54 be promptly voided and as soon as you are prepared to restore the work being done by outside forces I shall be pleased to negotiate with you the

possible abolishment of Position No. 2 at Carbondale Coal Billing Office.

"Your prompt reply will be appreciated.

"Yours very truly,

"General Chairman"

On February 16, 1955 Superintendent McDonough advised the General Chairman that a further reduction of the clerical force at the Carbondale Coal Billing Station would be made. The Carrier further contends that inasmuch as a new I.B.M. Billing Machine had been installed in the office to replace the outdated Elliot Fisher Billing machines and the new "fanfold" form which eliminated several duplicate reports and the necessity of handling multiple carbons that it became possible to further reduce the clerical staff. On July 7, 1955 the Superintendent advised the General Chairman that Position No. 2, Clerk, would be abolished July 21, 1955.

It is the opinion of this Board that after a thorough examination of submissions that the Organization has not demonstrated as claimed "that all the duties and responsibilities thereof remained to be performed and further violated the said Agreement by assigning the said duties and responsibilities to non-employees of the Carrier (Weighmasters at Hudson Coal Company breakers), and to an employee not subject to the scope and application of the Clerks' Agreement (Coal Billing Agent, J. Giblin)."

The Organization has submitted evidence regarding the number of cars of coal billed from 1954 to 1957, which is of interest, but in no way conclusive.

The Petitioner has simply failed to prove that which it had the burden of proving to support the alleged violation and therefore this Claim must be denied. Award 10067.

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 1 denied. Claim 2 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.