Award No. 12926
Docket No. CL-12393

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4891) that:

(1) The Carrier violated the current Clerks' Agreement when it abolished position of clerk in the Clarksville Agency effective with the close of business on January 31, 1958, and assigned the duties thereof to the Supervisory Agent, Operator-Clerk and Contract Drayman, persons outside the scope of the clerical agreement.

(2) Carrier shall restore the work of the abolished position to clerical employes.

(3) Employes W. L. Trinkle (deceased), W. A. Baldwin, T. J. Sims, Jr., E. O. Mabry, R. H. Brent, R. E. Wright, Alfred Ford and W. S. Bumgarner shall be compensated for all monetary loss suffered by them as a consequence of Carrier's violation of Agreement from January 31, 1958, until the condition is corrected.

NOTE: Reparations due claimants to be determined by a joint check of the Carrier's payroll and other records.

EMPLOYES' STATEMENT OF FACTS: Under date of January 27, 1958, Carrier posted Bulletin No. 3, advising the clerical employes of Seniority District No. 4 that the position of Clerk in the Clarksville Agency would be abolished effective with the close of the tour of duty on January 31, 1958 (see Employes' Exhibit No. 1). Prior to the abolishment of this position, Carrier's force in the Clarksville Agency consisted of the following:

Position	Hours	Work Week
Supervisory Agent	8:00 A. M.–6:00 P. M.	Monday–Friday
Operator-Clerk	8:00 A. M.–5:00 P. M.	Monday–Friday
Clerk	7:00 A. M.–4:00 P. M.	Monday–Friday

OPINION OF BOARD: The instant dispute concerns itself with the abolishment of a clerical position at one of the Carrier's stations. Prior to this action, the station personnel consisted of an Agent, an Operator-Clerk, the clerical position in dispute, and an extra station laborer. The Carrier justifies its action by maintaining that there was a substantial reduction in the work load at this station, thereby necessitating, commensurate with economy of operation and efficiency, the elimination of this position. It further contends that this was in strict accordance with the basic agreement and specifically with Rule 17(d) thereof. The Petitioner on the other hand counters this agreement by asserting that the work formerly done by the Clerk has now been distributed to the Agent, the Operator-clerk and the extra laborer (sometimes referred to in the record as the Contract Drayman), all of whom are not within the purview of the Clerical Agreement, and that as such the Collective Bargaining Agreement has been violated, specifically the Scope Rule contained therein.

A review of the record indicates that it became a matter of judgment for the Carrier to select which of the positions would be abolished in order to maintain, under a reduced workload, maximum efficiency. It chose the clerical position. This, it seems to us, was a proper exercise of managerial prerogatives in the face of a substantial reduction of work. Superimposed, however, on this principle, is the fact that we have a broad, general Scope Rule, which lists the categories of employes covered and generally governs their working conditions, but does not describe in great detail nor does it grant an exclusive right to a definitive body of work. There have been many cases before this Division in which the principle has been well established that with such a broad Scope Rule, the Petitioner must prove that by custom, tradition and practice, the work which has been denied to him, has been done by him and his fellow classification of employes to the exclusion of others. The burden of proof rests solely with the Petitioner. A review of the available evidence in this case reveals that the work which Petitioner claims is his was, in fact, performed by the Agent and Operator-Clerk before the Clerk's position was ever established. There are many sound decisions emanating from this Board which state categorically that work once done by the Agent, etc., having been turned over to the Clerk because of its great volume, and later on, because of an abatement of the once-heavy workload, may be returned to the Agent without a violation of the Clerical Contract.

The evidence reveals that historically on this property, the right of agents and operator-clerks to perform clerical work antedates any such right of clerical employes. We, therefore, deny this claim based on the following grounds: (1) it is our judgment that the action taken was a proper and sound exercise of managerial prerogatives, especially so when considered in light of a substantial reduction of workload; (2) with such a broad Scope Rule, the burden of proof is on the Petitioner to demonstrate that he has an exclusive right to the work. He has not sustained this burden, and, in view of this and for the preceding reasons, we must deny the claim.

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 28th day of September, 1964.

LABOR MEMBER'S DISSENT TO AWARD 12926, DOCKET CL-12393

The Referee states:

> "* * * There are many sound decisions emanating from this Board which state categorically that work once done by the Agent, etc., having been turned over to the Clerk because of its great volume, and later on, because of an abatement of the once heavy workload, may be returned to the Agent without a violation of the Clerical Contract."

This Award, however, is not one of those sound decisions referred to. It is closely akin to that warned of in Award 8764 by Referee Daugherty, where he said:

> "* * * it is possible to rely too heavily or even exclusively on the idea that in respect to work at stations, 'in the beginning God created Telegraphers and sometimes later the Clerks were fashioned out of a Telegrapher's rib.'"

It is also possible, as evidenced by this Award, for a Referee to ignore salient facts and permit the Carrier to accomplish indirectly what they are prohibited from doing directly. By this Award, the Referee has permitted Carrier to enter into a substandard contract with an individual (referred to in the Award as Contract Drayman), which permitted the Carrier to "abolish" the Clerks' position and distribute the remaining work thereof to the Agent; a supervisory employe with no telegraphic duties to perform, the telegrapher; working identical shifts with the Agent and with minimal telegraphic duties to perform, and the individual; the Contract Drayman, who entered into a substandard guarantee and who Carrier admits was employed "on a limited part time basis" and, further, that "at no time had he worked in excess of 4 hours on any day."

Whenever a Referee leans so heavily away from the Agreement arrived at through the process of collective bargaining and ignores the fact that individuals cannot enter into legitimate agreements contrary to the terms thereof his Awards are immediately suspect. For the above and other reasons, I dissent.

D. E. Watkins
Labor Member 10-27-64