

Award No. 13639
Docket No. CL-12800

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5011) that:

(1) Carrier violated the Agreement when it abolished the three Chief Movement Clerks and one Relief Chief Movement Clerk in the Chief Dispatcher's Office, Camden Station, Baltimore, Md., and reassigned the work which remained to be performed to Chief Dispatchers and others not covered by the Clerks' Agreement, and

(2) That F. L. Lawrenz and R. V. Bialek be paid for 8 hours each day at the rate of \$20.49 per day (plus subsequent increases) commencing with June 1, 1960 and continuing until such time as the work involved is properly restored to positions covered by the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: Effective with the close of business on May 31, 1960, the following positions coming under the scope of the Clerks' Agreement in the Chief Dispatcher's Office, Camden Station, Baltimore, Md., were abolished:

Chief Movement Clerk	— 65-1-437
“ “ “	— 65-1-438
“ “ “	— 65-1-439
Relief Chief Movement Clerk	— 65-1-443

Claimant F. L. Lawrenz was the regular assigned incumbent of position 65-1-438. Claimant R. V. Bialek was the regular assigned incumbent of position 65-1-443.

All of the work performed by the Chief Movement Clerks prior to abolishment of these positions was reassigned to employees not covered by the Clerks' Agreement commencing with June 1, 1960, the majority being assigned to the Chief Dispatchers and a portion of such work being assigned to the

**those under the scope of the Clerks'
Agreement:**

In Award 6325 of this Division (BRC v B&O) the Statement of Claim read in full as follows:

"Claim of the System Committee of the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, that

1. — The Carrier violated Rules 1(c)1 and other rules of the Agreement at Glenwood, Pa., when effective September 28, 1949, it abolished Position No. 72-1-781, Second Trick Enginehouse Clerk at Glenwood, Pa., and assigned part of the clerical work attached thereto to General Foreman and Assistant Engine House Foreman, who are not covered by the Clerks' Agreement.

2. — That Leo K. Heidenreich, extra clerk, be compensated at the rate of \$12.19 per day for each day Position No. 72-1-781 was abolished, beginning with September 28, 1949, and concluding with November 25, 1949.

3. — That Robert W. Smith, former incumbent on Second Trick Engine House Clerk who was obliged to displace Third Engine House Clerk, be compensated for a differential in rate of pay based on time and one-half for all hours and/or days worked outside of his original assignment beginning with September 28, 1949, until his position was restored.

4. — That Frank Wytiaz, former incumbent on Third Trick Engine House Clerk, who was obliged to displace Relief Engine House Clerk, be compensated for a differential in rate of pay based on time and one-half for all hours and/or days worked outside of his original assignment, beginning with September 28, 1949, until position was restored."

The claim in Award 6325 was denied by this Board with Referee Frank Elkouri sitting. The Opinion of the Board in Award 6325 read in its entirety as follows:

"OPINION OF BOARD: As a result of a general strike in the coal and steel industries the Carrier abolished Position No. 72-1-781, Second Trick Enginehouse Clerk at Glenwood, Pennsylvania, effective September 28, 1949. The position was restored on November 25, 1949, and the claim herein covers the intervening period. The Employees make the following statement regarding the right of the Carrier to abolish the position:

'This Committee does not deny the existence of a coal and steel strike at the time this position was abolished. We do not deny that Carrier is within its rights to abolish positions when the work on such positions has substantially disappeared. We have previously admitted that as a direct result of the coal and steel strike the dispatchments were somewhat reduced during the tour of duty of the Second Trick Enginehouse Clerk position.'

But the Employees objected that although other clerical positions under the Clerks' Agreement remained in existence at this location, certain Foremen not covered by the Clerks' Agreement performed some of the work that would have been performed by the incumbent of the abolished position had it not been abolished. The Employees conclude that for this reason the position was improperly abolished.

The Record clearly establishes that the only part of the work of the abolished position that was performed by any Foreman, was 45 minutes per night performed by the Night General Foreman. The record further establishes that the particular type of work so performed, involving the use of the telephone in the General Foreman's office, does not belong exclusively to employees under the Clerks' Agreement, but is incidental to the Foreman's position and was performed by the Foreman prior to the abolishment of the Clerk position. The Employees have failed to prove that any Foreman performed any work belonging exclusively to employees under the Clerks' Agreement. This recognized, the claim must be denied. See Award 3494."

The contents and meaning of Award 6325 are apparent. This Division ruled directly that the " * * * use of the telephone in the General Foreman's office * * * does not belong exclusively to employees under the Clerks' Agreement, but is incidental to the Foreman's position and was performed by the Foreman prior to the abolishment of the Clerk position. * * *." It is significant that this Board has ruled authoritatively that in such a case involving the use of a telephone " * * * (the organization) failed to prove that any Foreman performed any work belonging exclusively to employees under the Clerks' Agreement. * * *."

**The award of Special Board of Adjustment
No. 192 cited by the Committee in support
of its position has no application whatever
in this case:**

In the Memorandum of Conference of Sept. 26, 1960 the Division Chairman contended in part that " * * * Carrier's action here constitutes a violation of the Clerks' Agreement, we respectfully refer to what was stated by Special Board of Adjustment No. 192 in its award in Docket No. 12 rendered at Baltimore, Md., on February 18, 1959, covering a somewhat similar dispute at Grafton, W. Va. * * *."

Actually, the holding in Award in Docket No. 12 of Special Board of Adjustment No. 192 has no application whatever to support the instant claim. The holding in Award in Docket No. 12, read in part as follows:

"Following abolishment of a clerical position in the office of the Division Engineer at Grafton, W. Va., the remaining work of the position was assigned to excepted positions.

"The employees argue that the abolishment of the position was improper and cite Rule 1(c) 1 and 2 in support of the claim.

"There is dispute with respect to the amount of work which remained on the position when it was abolished. However, in the view we take of the claim it is not necessary to resolve that question.

Rule 1(c)1 requires that when a covered position is abolished the work assigned thereto which remains to be performed will be re-assigned to position or positions covered by the agreement when such position or positions remain in existence at the location where the work of the abolished position is to be performed. Although the Carrier argues that there were no covered positions remaining in the Division Engineer's office it is shown that there were covered positions at Grafton in an adjacent office. The rule is not confined to a given office but rather treats of a 'location'. Clearly an adjacent office under the circumstances here present would come within that designation."

There is no such issue in the instant case. With the exception of one dispatcher on the division there are no "excepted" positions involved in the instant dispute. The work in this dispute about which complaint has been made was performed solely by employees coming under the scope of agreements with the American Train Dispatchers' Association and The Order of Railroad Telegraphers. Those employees performed only those duties and functions that directly attached to the primary duties of their craft. This was equally true in the case of the one so-called "excepted" Chief Dispatcher. His duties were exactly similar to the duties performed by the other Chief Dispatchers, coming under the scope of the agreement with the ATDA. The holding in the award in Docket No. 12 of Special Board 192 has no application to the instant case. It was frankly conceded in Docket No. 12 that certain clerical work had been assigned to "excepted" positions. The work remaining in this case was performed solely by those employees coming under the scope of the 'Telegraphers' or Train Dispatchers' Agreement, work that formerly and properly directly attached to the primary duties of the position. Whatever work formerly performed by the Chief Movement Clerks that could be construed as solely clerical disappeared in its entirety by reason of the abandonment and discontinuance of the preparation of certain specific reports. Nothing was left except telephoning and telephoning, as has already been described, is by no means the exclusive reservation of employees under the Clerks' Agreement.

While the holding in Docket No. 12 of Special Board 192 has no application to support this claim there are other holdings before Special Board 192 denying claims from Clerks under similar or related situations.

For example, in Award No. 28 of Special Board of Adjustment No. 192 (BRC v B&O) (Referee Robertson) claim was denied with the following holding in part:

"A study of the reports of the joint check prepared separately by the Carrier's representative and the Employees' representative indicates that the work remaining on the clerical position was less than four hours and was incidental to the duties of the Agent. Under the circumstances it is apparent that there is no basis for a sustaining Award."

The holding in Award No. 44 of Special Board of Adjustment No. 192 read in part:

"It is apparent from the wording of Rule 1(c)2 that it is not necessary in order to qualify as a Supervisory employee one must supervise work of employees covered by the Clerks' Agreement. It is further clear that the Agreement recognizes that Foremen are not

the only supervisory employees intended by the Rule. It is apparent that if the facts are as stated by the Carrier the carman-checker would be considered as a supervisory employee since overseeing for direction and inspection with authority to require changes in work to meet inspection standards are elements comprising the supervisory function. * * *."

Again, for example, the holding in Award No. 50 of Special Board No. 192, read in part as follows:

"It is apparent from the showing made by the Carrier that the work of unloading sand has not been traditionally and customarily performed by employees covered by the Clerks' Agreement. In other words it is not exclusively Clerks' work. * * *."

What in effect the Clerks' Organization asks is that the work now being performed by employees under the ORT Agreement be taken away from those employees and reassigned to employees coming under the scope of the Clerks' Agreement:

It is established in this record that on each trick there is a position of side-wire operator-clerk left remaining. These positions come under the scope of an agreement between this Carrier and the Order of Railroad Telegraphers. What in effect the Clerks' Organization asks in this case is that the work now being performed by these employees be taken away from them and reassigned to employees under the Clerks' Agreement. Plainly their title alone of "operator-clerk" evidences that at least in part some of their duties are clerical in nature.

In effect the Carrier submits that the instant dispute is a restatement of a dispute, jurisdictional in character, going back over a period of many years between the Brotherhood of Railway and Steamship Clerks and the Order of Railroad Telegraphers, a dispute that long before has been settled and disposed of on this property. That jurisdictional dispute was resolved on this property in favor of the applications and pleadings of the Order of Railroad Telegraphers.

Specifically, the Carrier has reference to two disputes handled before this Board by the Brotherhood of Railway & Steamship Clerks during the year 1943 and identified as Dockets Nos. CL-2606 and CL-2607.

The Statement of Claim in Docket CL-2606 read as follows:

"Claim of the System Committee of the Brotherhood that the Carrier violated provisions of the Clerks' Agreement:

1. — When on January 29, 1942 it established position of Operator-Clerk, third trick, and on February 2, 1942 when it established position of Operator-Clerk, second trick, in Chief Dispatcher's Office, Pittsburgh, Pa.

2. — That these two positions be advertised on Clerks' Bulletin on Pittsburgh Division seniority district and properly assigned to the senior qualified clerk bidding on same.

3. — That clerks who may be assigned these positions be allowed any monetary loss suffered by them on and after January 29, 1942 and February 2, 1942, respectively, account of action of Carrier in not properly advertising the two positions on Clerks' Bulletin."

The Statement of Claim in Docket CL-2607 read as follows:

"Claim of the System Committee of the Brotherhood —

1. — That the Carrier violated provisions of the Clerks' Agreement when it declined to assign Mr. J. F. Kimble to position of Assistant Car Distributor as advertised on Wheeling Division Advertisement No. 14 on April 11, 1942.

2. — That Mr. J. F. Kimble be paid for wage loss suffered by him for all time worked after April 21, 1942."

In the case in Docket CL-2606 two positions in the Chief Dispatchers' office at Pittsburgh, day chief clerk and night chief clerk, were abolished as of Sept. 8, 1930. In Jan. 29, 1942 and February 2, 1942 positions of third trick and second trick operator-clerk were established and assigned to employes coming under the scope of the Telegraphers' Agreement.

In the case in Docket CL-2607 a position of report clerk in the Car Distributor's office on the Wheeling Division was abolished and when on April 6, 1942 a position of Assistant Car Distributor was advertised, the Clerks' Bulletin advertising the position was later made with the following notation:

"No assignment made position Assistant Car Distributor Wheeling account operator-clerk position put on in lieu of Assistant Car Distributor."

In both cases the Brotherhood of Railway & Steamship Clerks appeared before this Board contending, in the one case, that "* * * The positions known as Operator-Clerks (performed) practically eight (8) hours clerical on each position * * *", and in the other case that "* * * The Management cannot legally use a clerical position and assign it to a telegraph operator for the purpose of training train dispatchers * * *."

With both dockets before this Board former President V. O. Gardner of the Order of Railroad Telegraphers addressed communication to then Secretary H. A. Johnson of this Division under date of January 17, 1944, stating in part that "Certain employes represented by the Order of Railroad Telegraphers on the Baltimore and Ohio Railroad who are employed by the Carrier in positions involved in a dispute handled with the Third Division by the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employes have expressed themselves as being materially affected by the outcome of this dispute. Accordingly, they have signified a desire to present their interest before the Division when hearings are held or other adjudicatory action is taken on this claim. * * * this letter together with the enclosures will also serve as advice that there are parties other than the claimant and the carrier who are interested and involved in this dispute and who will be affected by the award. On behalf of these interested employes, I desire to be notified promptly of any action by the Division so that ample opportunity will be afforded such employes or their representative to

participate in any hearings or deliberation which may be conducted by the Division on this docket. * * *."

In the meantime while the cases were before this Board the Order of Railway Telegraphers circularized a booklet entitled "The Other Side of the Story" which presented "Facts Relating to Jurisdictional Controversy Between It and The Brotherhood of Railway and Steamship Clerks." This booklet was dated July 15, 1944.

At any rate these particular dockets were withdrawn from further consideration by this labor tribunal and assigned Awards Nos. 2954 and 2955. The effect of the withdrawal of these dockets from further consideration was to confirm the propriety of the Carrier's action in assigning these duties to positions known as operator-clerks under the scope of the agreement with the Order of Railroad Telegraphers.

In summary, this matter has laid dormant on the property of this Carrier since the withdrawal of these particular dockets, confirming the propriety of having this kind and type of work performed by operator-clerks. There was no basis for the position taken by the Clerks' Organization before this Board during the year 1943. Likewise, there is no merit to the position taken by that organization in the instant claim.

CARRIER'S SUMMARY STATEMENT: Functions related to line-up power, handling of crews, make-up of trains, dispatchment of trains, etc., are not clerical functions. They are the principal duties and responsibilities of train dispatchers. Information relating to the handling of consists of trains belongs by agreement rule to employees coming under the scope of the agreement with the Order of Railroad Telegraphers. In this case with the abolishment of the clerical positions and discontinuance of reports previously prepared and compiled by employees occupying those positions the only work left remaining formerly performed by the abolished positions was the use of the telephone. The use of the telephone, however, furnishes no basis whatever for a wage claim coming from the direction of a clerical employee. It has already been thoroughly ruled before this Board that the use of the telephone is an incident to the duties performed by many other positions besides clerical positions.

In summary the Carrier submits that the claim in its entirety in this case is without merit. The Carrier respectfully requests that this Division so rule and that the claim in its entirety be denied.

OPINION OF BOARD: Due to a decline in business, Carrier abolished three Chief Movement Clerk positions and one Relief Chief Movement Clerk position in the Chief Dispatcher's Office at Camden Station, Baltimore, Md. On June 1, 1960, the work remaining after these abolishments was assigned to employees not covered by the Clerks' Agreement, most of whom were Chief Dispatchers.

F. L. Lawrenz and R. V. Bialek claim that they are entitled to compensation because of a violation of Rule 1 (c). They point out that the parties agreed that the employees and positions classified in Group 1 on March 1, 1947 were thereafter to be fully covered by the Clerks' Agreement. Since the positions of Chief Movement Clerk and Relief Chief Movement Clerk are classified in Group 1, these positions and the work are fully covered by the Clerks' Agreement and under sub-paragraph (1) of Rule 1 (c), any re-

maining work attached to these abolished positions must be reassigned to positions covered by the Clerks' Agreement when such exist at the location.

In declining the claim, Carrier asserts that the only work left of the abolished clerical positions involves the use of the telephone and that this work is not exclusively reserved to employees under the Clerks' Agreement. It also submits that the telephone work left is work incident to the primary duties of the class to which it was assigned and hence, its action was proper under the provisions of sub-section (4) of Rule 1 (c).

The record discloses that Carrier discontinued most of the reports and records prepared and handled by the Chief Movement Clerks and the Relief Chief Movement Clerk. The Chief Dispatcher no longer required the assistance furnished by the Chief Movement Clerks, as he did during the War, and, therefore, their positions were abolished. The remaining work, involving the use of the telephone, is not the exclusive right of the Clerks and their performance of it does not make it so. In fact, previously it had been performed by the Chief Dispatcher and now, was resumed by him.

Furthermore, the remaining work is work incident to and directly attached to the primary duties of the Chief Dispatcher. Therefore, this work could be reassigned under sub-paragraph (4) of Rule 1 (c). Where the duties have been reassigned under sub-paragraph (4) of Rule 1 (c), sub-paragraph (1) to which Petitioners refer does not apply.

We find the factual situation in the instant case similar to that in Award 6325. In that dispute, the Board held that the Agreement was not violated because the remaining work did not belong exclusively to the Clerks and was incident to the primary duties of the other craft to which it was assigned. We concur in this Award and hold that the Agreement was not violated.

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

The Agreement of the parties 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 May 1965.