

Award No. 14087
Docket No. CL-12512

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4904) that:

(1) The Carrier violated, and continues to violate, the provisions of the effective Clerks' Agreement when it abolished Relief Position JT-662 at West Chicago effective September 8, 1958 and changed the rest days of J. T. McQuade, incumbent of Position JT-516 from Monday and Tuesday to Saturday and Sunday which changes result in the Carrier's assigning work coming within the scope of our agreement to Conductors, employees beyond the scope thereof; and

(2) The Carrier further violated and continues to violate the effective Clerks' Agreement when it abolished Position JT-516 at West Chicago effective October 1, 1959 and assigned work coming within the scope of our agreement to Conductors, employees beyond the scope thereof; and

(3) The Carrier be required to return the work to the employees within the scope of our agreement; and

(4) The Carrier shall compensate J. T. McQuade and/or his successor eight (8) hours at the rate of time and one-half for each Saturday and Sunday beginning sixty (60) days prior to the date of our initial claim dated February 7, 1959 and continuing until the violation is corrected; and

(5) The Carrier shall compensate S. Seabron, incumbent of abolished Position JT-516, eight (8) hours pay at the straight time rate of that position for Thursday, October 1 and Friday, October 2, 1959, also eight (8) hours pay per day for each Monday through Friday commencing Monday, October 5, 1959 and continuing until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Under date of September 3, 1958, Bulletin No. 143 was issued which abolished Relief Position JT-662.

it at the station, and then adding the cars to his wheel report, and leaving an IBM list of cars set out, most certainly is a conductor's work. Whatever clerical functions are involved in doing this (if such can be considered at all), certainly is work incidental to the conductor's regular duties.

Therefore, there are basically two types of clerical claims — (1) a positional claim, and (2) a specific instance or work item claim involving exclusive clerical work or a claim that another craft or class employe had no right to perform the work, and an extra clerk should have been called or a clerk on duty and available at the location should have performed the work.

The BofRC, as the moving party, has failed to carry the burden of proof and establish the essential elements of a positional claim. The BofRC has not shown that there is regularly four hours or more time per day to be devoted to clerical duties on the night shift at West Chicago. The BofRC has not shown that conductors are regularly performing this amount of clerical work per day at this point. The BofRC has not and cannot show that conductors are performing any clerical functions (exclusive or otherwise) at West Chicago.

The BofRC likewise has failed to establish a specific instance claim of any nature, for it has not shown one instance where a conductor picking up at West Chicago has performed work which exclusively belongs to the employes it represents. The BofRC has not shown, either, that as between the rights of employes in two distinct crafts or classes the specific clerk claimant had a superior right and should have been called or should have been allowed to perform this work.

Neither of the above situations exist at West Chicago nor have they ever existed during the period of time covered by the instant claim. Accordingly, there is no semblance of merit in the BofRC's position and this claim must be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that the Division found that Carrier's conductors are involved in this dispute and through their representative, The Order of Railway Conductors and Brakemen, were afforded an opportunity to be heard pursuant to Section 3, First (j), of The Railway Labor Act. That Organization declined to participate herein.

In the handling of the dispute in its answer to Petitioner's Submission to this Board, the Carrier objected that the claim had not been handled in accordance with the requirements of Article V of the Agreement of August 21, 1954. That issue was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretation or application of certain stated provisions of specified National Nonoperating Employee Agreements. On March 17, 1965, that Committee rendered the following Finding and Decision (NDC Decision 17):

"FINDINGS: (ART. V) In its rebuttal submission before the Third Division the carrier contends, in relation to Article V of the August 21, 1954 Agreement, that the claim is barred because (1) it was not filed in compliance with Article V, (2) the employes' position changed as between their original claim and their submission to the Third Division, and (3) the claim does not designate proper claimants.

The National Disputes Committee rules that inasmuch as the carrier did not contend during handling on the property that the claim was barred because of noncompliance with Article V of the August 21, 1954 Agreement, it may not inject such contention before the Third Division.

DECISION: The carrier waived any contention that Article V bars the claim by its failure to raise that question on the property. This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, N.R.A.B., for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

On the merits, it appears that due to a decline in business on Saturdays and Sundays the Carrier on September 8, 1958, abolished a seven-day clerical position, JT-516, at its West Chicago Station, changing it to a five-day assignment with Saturdays and Sundays as rest days. Carrier also abolished Relief Position JT-662 as of the same date, the occupant of which had been assigned to relieving the incumbent of JT-516 on Mondays and Tuesdays. The net effect of these changes was that on Saturdays and Sundays neither the JT-516 position nor its relief, Position JT-662, was worked.

Due to a continued decline in business and the inauguration of certain improvements in operational and accounting car control techniques, the Carrier on October 1, 1959, abolished the clerical position JT-516 on the grounds that the only clerical work remaining to be performed was making out yard checks and switch lists which was said to require less than two hours work per day.

The basis of the claim is that work belonging to and performed by Clerks which remained after the abolishment of the aforesaid clerical positions was thereafter performed by employees of another craft, i.e., Conductors.

Rule 1 (Scope) and Rule 66 clearly and expressly prohibit the unilateral abolishment of clerical positions and the allocation of any remaining work thereof to other than covered employees. Thus the sole dispositive question here, as is so often the case, is one of fact: Was the work performed by Conductors in this case that which had been performed by Clerks?

A preponderance of the credible evidence of record demonstrates conclusively that in the absence of switch lists prepared by Clerks, the Conductors did no more than check the cars and waybills, work which customarily and usually is performed by employees of that craft or class in the course of their regular duties. Moreover, the record further discloses that this work is required of Conductors, whether or not a switch list is prepared for them, under the Carrier's Operating Rules (Nos. 816 and 817). It is also shown that no conductor here involved was required to record, list or otherwise prepare reports of record similar to or identical with those required of the incumbents of the abolished clerical positions.

In order successfully to bring a claim of this kind within the purview of the aforesaid restrictive agreement rules, it must be established by competent evidence that the covered clerical work was, in fact, allocated to and performed by others. That showing on the facts here has not been made.

Accordingly, the claim will be denied.

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 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 14th day of January 1966.