

**Award No. 14593**  
**Docket No. CL-12676**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John H. Dorsey, Referee**

**PARTIES TO DISPUTE:**

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

**NORFOLK AND WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-4947), that:

1. The Carrier violated and continues to violate the Clerks' Agreement when on May 25, 1960 it nominally abolished the position of Clerk-Warehouseman at the Grundy, Virginia Station by Bulletin No. 4376-A, dated May 19, 1960, and removed all of the work attaching to this position from the scope and application of the Clerks' Agreement by assigning the work to the Agent, who is an employe not covered by the Clerks' Agreement.

2. The Carrier shall reestablish the position of Clerk-Warehouseman at the Grundy, Virginia Station and restore all of the work attaching thereto prior to the nominal abolishment of this position to the scope and application of the Clerks' Agreement.

3. The Carrier shall restore the last regularly assigned incumbent, A. C. Blackburn, to this position and compensate him for all wage loss sustained account this violation and continuing until same is corrected.

4. The Carrier shall compensate any other employes for all wage loss suffered account this violation, continuing until same is corrected.

**EMPLOYES' STATEMENT OF FACTS:**

1. Prior to Wednesday, May 25, 1960, the Carrier maintained a station force at the Grundy, Virginia Station consisting of the following:

Agent

Clerk-Warehouseman

2. Employe A. C. Blackburn was assigned to the position of Clerk-Warehouseman, 8:00 A. M. to 5:00 P. M., Monday through Friday, rest days Saturday and Sunday. The duties normally attached to this position and

of the Carrier's Pocahontas Division, extends southeast from Devon, West Virginia, main line junction point.

The Carrier's agency at Grundy, Virginia, was first established on July 1, 1931, and the clerical work at that station was performed by the agent and operator, an employe under the Telegraphers' Agreement. A position as clerk, under the Clerks' Agreement, was first established at Grundy on November 21, 1935, and an additional position as clerk was established at that point in October, 1938. The two positions as clerk continued to exist until November, 1953, at which time one of the two positions was abolished, and from November, 1953, to May 25, 1960, there was only one position as clerk at Grundy station.

Effective May 25, 1960, the remaining position of clerk at Grundy, designated as clerk-warehouseman, rate of pay \$394.70 per month, and occupied by A. C. Blackburn, the claimant in this case, was abolished and Grundy became a one-man station. Thereafter, the clerical work formerly performed on such abolished position was performed by the agent and operator, an employe under the Telegraphers' Agreement.

Following abolishment on May 25, 1960, of the clerk-warehouseman position occupied by Blackburn at Grundy, Virginia, Blackburn worked as yard check clerk at Williamson, West Virginia, on May 26, 27, 28 and 29, 1960, rate of pay \$402.92 per month. On May 31, 1960, Blackburn was awarded regular assignment as yard check clerk at Williamson, West Virginia, rate of pay \$402.92 per month.

The Employes filed the following claim:

"That the Carrier violated and continues to violate the current Clerks' Agreement, notably Rules 1, 2, 3, 12, 54 and 66 when on May 19, 1960, Bulletin No. 4376-A signed by Mr. H. E. Carter, Superintendent, was posted abolishing position of Clerk-Warehouseman, Grundy, Virginia Station held by Clerk A. C. Blackburn.

Due to the Carrier's failure to comply with the provisions of current Clerks' Agreement, please accept this as request to re-establish position of Clerk-Warehouseman, Grundy, Virginia Station, abolished by Bulletin No. 4376-A and the last regular occupant, A. C. Blackburn, be restored thereto and compensated for all wage loss suffered account this violation. Also please accept this as time claim for all wage loss suffered by any other employes who may have been adversely affected by this violation.

In addition thereto, please accept this as claim for all subsequent days until this violation is corrected."

The Carrier declined the claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** It is Clerks' contention that Carrier violated the Agreement when it assigned clerical work to an agent-operator. To prevail Clerks' must prove that: (1) the Agreement specifically vests the exclusive right to the work in employes covered by the Agreement; or, (2) usually and customarily the work assigned to the agent-operator has been exclusively performed by clerks on Carrier's system (Award Nos. 12360 and 12462).

There is no rule in the Agreement which specifically vests clerks with exclusive right to the work involved.

Clerks' cite Rule 1 — Scope in support of its contention, which in pertinent part reads:

"1. (a) These rules shall govern the hours of service and working conditions of the following positions and employees subject to such modifications and exceptions hereinafter set forth.

Positions within the scope of this Agreement belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of positions from the application of these rules subject to such modifications and exceptions hereinafter set forth and except in the manner provided in Rule 66."

We find this provision to be general in nature. Therefore, Clerks' have the burden of proof set forth in (2) of the second sentence of the first paragraph of this Opinion.

There is a conflict in the record. Clerks say: "all of the above work was performed by employees occupying positions under the scope and application of this Agreement." Carrier asserts: "Each item of such work is performed at various points on the Carrier's property by employees not under the Clerks' Agreement." We cannot, from the record, resolve the conflict. Consequently, Clerks failed to satisfy its burden of proof by a preponderance of substantial evidence. We, therefore, will 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 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 claim fails for lack of proof.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1966.

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