

Award No. 15485
Docket No. CL-15009

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, 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-5599) that:

(1) The Carrier violated the Agreement when it abolished the position of Rate Clerk in the office of Terminal Agent at Nashville, Tennessee, effective with end of tour of duty February 15, 1963, and required or permitted the Terminal Agent to usurp the duties of the Cashier at Nashville, Tennessee, thereby relieving the Cashier so that he could perform the duties of the abolished Rate Clerk position.

(2) The Carrier shall now be required to bulletin the position of Rate Clerk in the office of Terminal Agent, Nashville, Tennessee, in accordance with our Agreement.

(3) (a) The Carrier shall now be required to pay Mr. Clarence A. Head the difference in rate of pay of the abolished Rate Clerk position and positions subsequently worked by him beginning at the end of the workday on February 15, 1963, and continuing as long as the Rate Clerk position remains abolished.

(b) Clerks Miss June Wiggerman, Mrs. Nellie Gasser, H. G. Goforth and A. E. Brock be compensated for loss suffered by them as a result of this action by the Carrier.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the Tennessee Central Railway Company and its Clerical and Station Employees bearing the effective date of September 15, 1938, and subsequent agreements: that certain rules of these agreements are involved in instant claim which are hereinafter shown.

On September 24, 1962, Mr. C. A. Head was assigned to the position of Rate Clerk in office of Terminal Agent at Nashville, Tennessee, to fill vacancy of R. E. Horton, created by his assignment to the position of Cashier in the same office. (Exhibit No. 1.) Mr. Head continued to work on the position

I cannot accept from you a claim on behalf of other clerks who may have been affected by the abolishment of the Rate Clerk position as I have not been notified that you are authorized to act for them.

Inasmuch as the Rate Clerk position is no longer needed I must decline your request that it be readvertised. In my opinion it was abolished in accordance with the provisions of the agreement and in the absence of a supporting rule you may consider your claim respectfully declined.

Yours very truly,

/s/ W. E. Manning
W. E. Manning
Gen. Supt.-Chief Engr."

Correspondence reflecting subsequent handling given the claim on the property is appended hereto marked Carrier's Exhibits Nos. 2 to 6, inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: The Brotherhood contends that after the abolition of the Rate Clerk position in the office of Terminal Agent at Nashville, Tennessee, Carrier permitted the Terminal Agent, to perform cashier's work contrary to the provisions of the Clerks' Agreement.

Carrier contends that the Rate Clerk position was abolished in accordance with the provisions of Rule 17(c) of the Agreement and the remaining duties thereof were properly distributed in compliance with the Agreement.

It must be noted that the Brotherhood does not protest the abolition of the Rate Clerk position, but does protest the rearrangement of the work after the abolishment and the performance of clerical work by the Terminal Agent.

The record reveals that since the abolishment of the Rate Clerk position, the Terminal Agent has performed clerical work at the cashier's window for two (2) to three (3) hours per day.

Although the Terminal Agent has in the past performed clerical work incidental to his supervisory duties, it must be the finding that the additional clerical work performed by the Terminal Agent since the abolishment of the Rate Clerk position can not be considered incidental work.

The above work performed by the Terminal Agent is work covered by the Scope Rule of the Agreement and his performance of such work is violative of the Agreement.

It is the further finding, that the Board does not have authority to order the Carrier to bulletin the position as requested in Part 2 of the claim.

It is also the further finding that the claim set forth in Part 3(b) of the claim is not a continuing claim and has not been filed within the sixty day time limit for filing.

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 Agreement was violated.

AWARD

Part 1 of the Claim is sustained.

Part 2 of the Claim is dismissed.

Part 3(a) of the Claim is sustained.

Part 3(b) of the Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1967.