



Award No. 18818
Docket No. CL-14653

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5498) that:

(1) Carrier violated and continues to violate the current working agreement when, effective May 25, 1962, it abolished the last remaining clerical position of Chief Clerk-Cashier at its Bradford, Massachusetts Station and removed the remaining work at the location comprising the regular duties of the assignment from under the scope and operation of the Clerks' Agreement and assigned them to the Agent, an employe of another craft and class, subject to the agreement of another craft.

(2) Carrier shall be required to restore all of the work removed from the agreement in violation thereof, to employes covered by the agreement who are entitled to perform it.

(3) Carrier shall pay Mr. F. T. Kenney and/or his successors a day's pay at the rate of \$21.64 from May 26, 1962 and at that rate daily until the work is properly restored to the Clerks' Agreement and employes.

EMPLOYEES' STATEMENT OF FACTS: Several years ago, Carrier re-located its freight and passenger facilities to a new, smaller depot at Bradford, Massachusetts, so-called, about 32.9 miles north of Boston, and under an existing experimental program, has frequent passenger service to and from Boston.

Prior to this, station facilities were located in Haverhill, Massachusetts, about one-half mile north, manned by ticket seller-telegraphers under the ORT.

Although Haverhill freight yard is located about 2 miles north of Bradford Station, its former freight house and office forces were located about ¾ mile north of Bradford. Clerical forces then consisted of a Chief Clerk, Cashier, Billing-Car Service Clerk, Yard Clerk and Freight Handler.

The Petitioner initiated claim on July 29, 1962, alleging that four or more hours of clerical work of the abolished position continued to be performed by the Agent at this now one-man station. On August 10, 1962, the Superintendent declined the claim on the basis that much less than four hours remained at the point and that there was, therefore, no violation of Rule 1(f). On November 20, 1962, or 102 calendar days later, the General Chairman appealed the claim. Thus, his failure to appeal the claim within sixty days resulted in the claim being outlawed. Although the claim was invalid under the time limit rules, a joint check was conducted by the parties.

Subsequently, the Petitioner continued to urge that there was at least four hours' work remaining, while Carrier's representative stated that only a maximum of two hours and fifteen minutes remained. Petitioner alleged that the then-existing agent had stated that there was a total of four hours and thirty minutes. However, such allegation was only hearsay and, of course, such agent was not a party-in-interest in the joint check.

By letter on April 29, 1963, the General Chairman was advised that the claim was declined on the basis that less than four (4) hours' work remained and, consequently, no violation of Rule 1(f), and on the basis that there was a violation of the time limit rule by his failure to appeal the dispute properly.

Although the claim had been handled to a final conclusion on the property, the General Chairman requested and was granted at least six additional meetings on this dispute. Finally, in order to fully support the fact that the employee's claim is invalid, a statement was prepared by the Acting General Agent, Mr. A. A. Ayotte, dated July 23, 1963, confirming the fact that only two hours and fifteen minutes of the former clerical work continued to be performed at the point. This statement is shown as Carrier's Exhibit A, attached.

Although the employees were guilty of another procedural defect by their failure to progress this dispute within nine months of April 29, 1962, the carrier agreed to extend the nine-month time limit to submit the matter to your Board, but with the understanding that other procedural defects were not waived.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to June 25, 1962, a Chief Clerk-Cashier and General Agent were assigned to the Carrier's station at Bradford, Massachusetts. Effective June 25, 1962, the Chief Clerk-Cashier's position was abolished and the remaining work was assigned to the General Agent, an employee of another craft and class, subject to the Agreement of another craft.

Claim was filed and progressed on the theory that more than four hours of clerical work of the abolished clerical position was being performed by the General Agent in violation of Rule 1(f).

The record shows that the Division found that Carrier's telegraphers' employees are involved in this dispute, and through their representative, the Transportation-Communication Division, BRAC, were afforded an opportunity to be heard pursuant to Section 3, First (j) of the Railway Labor Act.

There is nothing of probative evidence in the record to indicate what work was involved and how much, if any, that was assigned to telegraphers. This was the last telegrapher position at this point, and in line with many awards of this Board involving this same issue, the Petitioner has failed in its burden of proof.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1971.