

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 19896
Docket Number CL-19828

Benjamin Rubenstein. Referee

(Brotherhood of Railway, Airline And Steamship Clerks,
(Freight Handlers, Express And Station Employees

PARTIES TO DISPUTE: {

(Boston And Maine Corporation

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-7137**)
that:

1. Carrier violated and continues to violate Rules 1, 2, **3**, 14, 31 and others of the current clerks agreement, effective September 1, 1952 as amended, and including the National Agreement dated February 25, 1971. when it abolished its last remaining clerical position at Keene, N. H., on April, 9, 1971, assigned all of the work to the Agent, an employee outside the class and craft of the agreement on that date, following which. **effective** on May 1, 1971, it re-assigned the preparation of freight bills, rendering and collection of freight charges and other related functions to clerical **employees** in another seniority district.

2. Carrier shall pay John **Bresland**, Clerk. Keene, N. H. for all wage losses, including subsequent wage increases, fringe benefits, insurance **premium** payments, vacation credits, holidays and interest compounded at 6% continuous from April 9, 1971 to such time, when all work is restored to the clerical class and craft within its original seniority district, subject to compliance with proper rules procedures for subsequent work transfers.

OPINION OF BOARD: On April 9, 1971 the Carrier abolished the last clerical position at Keene, N. H. and assigned all the remaining work to **the** Agent. Claimant protests the abolition of his job and demands reinstatement with back pay and interest at 6%.

Rule **2(a)** of the basic agreement between the parties defines a clerk as one who devotes "not less than four hours per **day...**"**to** his job.

On March 23. 1959 a further agreement between the parties, provided, in part as follows:

"**(f)** When a position covered by this agreement is abolished, the work previously assigned to such position which remain **to** be performed will be assigned in accordance with the following:

"**(2)** In the event no position under this agreement exists at the location where the work of the abolished

"position or positions is to be performed, then it may be performed by an **agent,...or** other supervisory employee, provided that less than four hours' work per day of the abolished position or positions remains to be performed). ."

The above citations clearly **show** that it was the intent of the parties to give the Carrier the right to abolish a clerical position and transfer the remaining work, **if** it was less than four hours per day to an employee outside of the bargaining unit.

On April 8, 1971, a day before the position was abolished, a joint check was made by the parties as to the remaining duties of the position in question. The Petitioner claims that the check showed that there was a total of six hours and twenty five minutes work per day. The Carrier, on the other hand, claims that the check, inclusive of 2 hours and 24 minutes per day of work **described as** miscellaneous, **totalled** less than four hours per day. Deducting the two hours and 24 minutes which, carrier claims, is not part of the duties of the position, the total time per day required, was only one hour and thirty minutes.

The Board has no way of deciding the contradictory claims. It was incumbent upon the claimant to present evidence of its contention. This, claimant failed to do.

Under the circumstances, the Board must deny the claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated **at** Chicago, Illinois, this 8th day of August 1973.