

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22751
Docket Number cL-22754

George E. Larney, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES T O DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8671) that:

1. Carrier violated and continues to violate the current Clerks' Agreement at Buffalo, New York beginning on January 6, 1977 when it required or permitted Agent **E. L. Kowal** to perform clerical work which is reserved to **employees** covered by the Agreement.

2. Carrier shall be required to compensate Clerk **P. Robbins** in the amount of eight (8) hours pro rata pay at the established rate of the position of Utility Clerk for January 6, 1977 and continuing on each day thereafter until the violation is corrected. This **com-**
pensation is in addition to any other compensation received by Clerk **Robbins** on the dates involved.

OPINION OF BOARD: At their Agency facility located in Buffalo, New York. Carrier by bulletin issued December 30, 1976, abolished the following-three (3) clerical positions effective with the close of business January 5, 1977: Transit Bill Clerk, Claim Utility Clerk, and Utility Clerk. According to the Carrier, the **remaining** work duties associated **with** these abolished positions were assigned to other established clerical positions. However, Petitioner alleges **that some** of the work duties of the abolished positions were assumed by an Agent as part of his regular work. Thus Petitioner claims, Carrier violated the applicable Agreement, effective **April** 1, 1973, by assigning work fully covered by the Agreement (that is work of the three abolished clerical positions) to the Agent who is a non-contract **employee** holding a fully excepted position from the Agreement.

Carrier denies **Petitioner's** allegations, maintaining that the Agent has not assumed any work from the abolished positions, but rather performs only those related clerical duties which are **germane**

to his position as Agent. Furthermore, Carrier asserts Petitioner has failed to present probative evidence or facts **confirming** its contention that duties of the abolished positions were assumed by the non-contract Agent. In support of its position, Carrier produced results of an investigation into this matter which revealed the following:

- (1) **Remaining** duties of the Transit Bill Clerk-Position No. 20 were assigned to the Switching and Report Clerk-Position No. 130.
- (2) **Remaining** duties of the Claim Utility Clerk-Position No. 22 were assigned to Chief Claim Clerk-Position No. 6.
- (3) Remaining duties of the Utility Clerk-Position No. 128 were assigned to Reconsignment and Demurrage Clerk-Position No. 32,

After a careful review of the entire record and taking into account the following applicable principle set forth in Third Division Award No. 806, March of 1939, cited in relevant part as follows:

"As this Division has previously pointed out, there are few, if any, employees **of** a carrier, from the president down to the laborer, who do not perform **some** clerical work in connection with their regularly assigned duties."

we can reach no other conclusion but that Petitioner has failed to meet its burden of proof to support the contention that the **non-**contract Agent did perform and continues to perform work which is covered under the Agreement and which belongs to clerical **employees**. **On** this basis, therefore, we must deny this 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;

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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. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 29th day of **February** 1980.