

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

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

**THE CINCINNATI, NEW ORLEANS AND TEXAS
PACIFIC RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of A. H. Clarke, former enginehouse clerk at Ludlow, Kentucky, for restoration of his former position and reimbursement of monetary loss suffered since February 1, 1935."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties:

"Prior to February 1, 1935, the company maintained the position of third trick enginehouse clerk at Ludlow, Kentucky. The duties assigned to and performed by Mr. A. H. Clarke, the regular assigned incumbent of that position were as follows:

1. Maintain book record of starting and quitting time of all hostlers and hostler helpers on his shift.
2. Compute and maintain book record of following data for all switch engines on his shift.
 - (a) Arrival time at ash pit.
 - (b) Starting and quitting time in switching service.
 - (c) Time due for change.
 - (d) Record of handling given by hostlers.
3. Compute and maintain book record of following data for all road engines on his shift.
 - (a) Arrival time at ash pit.
 - (b) Time and train ordered for use.
 - (c) Amount of time engine held at Ludlow.
 - (d) Record of handling given by hostlers.
4. Compile and maintain permanent book record showing arrivals, rest periods, departures and lay-offs of all road and yard train and engine crews on his shift.
5. Handle crew boards for all road, train and engine crews on his shift, and call all crews for road and yard service on his shift.
6. Check and make record of coal chute operation, including record of cars used at cinder pit on his shift.

"The facts in the case make it apparent that all carrier did was to abolish an unnecessary position, the expense of which could no longer be justified. This action is clearly authorized by the last paragraph of Rule 20-(g) of clerks' agreement.

"In conclusion, the carrier calls the attention of the Members of the Board to the fact that the claim of the employees is based on an entirely erroneous premise. They state in paragraph 1 of their position that 'Rules 1 and 2 of the clerks' agreement covers the employees and classes of work coming within the scope of the agreement . . .', but they either entirely overlook or ignore the fact that under the provisions of those very rules the other rules of the agreement are applicable to positions only when the incumbents thereof regularly devote four or more hours per day to the performance of clerical work as defined in Rule 2.

"Summarizing the case, we find it to be as follows:

"(a) Subsequent to February 1, 1935, no position existed on the third shift at the Ludlow, Kentucky, Roundhouse, the incumbent of which regularly devoted four or more hours per day to the performance of clerical work as defined in Rule 2 of clerks' agreement, nor was such an amount of clerical work transferred to any employee not included within the scope of the clerks' agreement, and, as the last paragraph of Rule 20-(g), clearly authorized the abolishment of clerical positions at any time, employees' contention No. 1 is untenable;

"(b) That inasmuch as Seniority Rule 4 and Promotion and Vacancies Rule 5 are effective only in connection with positions, the incumbents of which regularly devote four or more hours per day to clerical work, as defined in Rule 2 of the agreement, and as no such position existed on the third shift at the Ludlow, Kentucky, Roundhouse subsequent to February 1, 1935, the rules in question have no bearing on the instant case, and, for this reason, employees' contention No. 2 is without merit; and

"(c) That, as hereinbefore shown, a large majority of the clerical work performed by the third shift enginehouse clerk at Ludlow, Kentucky, prior to February 1, 1935, was transferred to clerical employees on the first and second shifts and no position was maintained on the third shift, the incumbent of which regularly devoted four or more hours per day to the performance of clerical work as defined in Rule 2, and as no position was created under a different title covering relatively the same class of work, there could have been no violation of Rule 20-(e) of the agreement.

"For the reasons shown above, it is manifest that the claim of the employees is not sustained, and carrier requests that the Board so decide."

OPINION OF BOARD: In this claim of A. H. Clarke, former enginehouse clerk at Ludlow, Ky., for restoration of his former position and reimbursement for monetary loss alleged to have been suffered since February 1, 1935, the employees submit that Rules 1 and 2 of the agreement between the parties, effective September 1, 1926, cover the employees and classes of work coming within the scope of the agreement, and contend that the carrier violated the terms of the agreement in abolishing the position formerly occupied by Mr. Clarke and assigning the duties of the former position to employees not covered by the agreement.

Together with Rules 1 and 2 the employees cite various other rules of the agreement as having a bearing on the subject at issue, and particularly Paragraph (e) of Rule 20 covering preservation of rates and employment.

The carrier contends that the provisions of Rules 1 and 2 are applicable only to clerical workers as defined in Rule 1, the scope rule of the agreement,

who qualify as clerical workers under the provisions of paragraphs (a) and (b) of Rule 2, and which defines clerical workers as employees who regularly devote not less than four hours per day to work of the character specified in the rule; and claim that the abolishing of the position outlined in this dispute is authorized in the last paragraph of Paragraph (g) of the Rule 20 of the agreement.

In the opinion of the Board, Rules 1 and 2 are specific in their requirements and conditions and, in their application to this instant claim, no violation of the agreement would be indicated except as evidence was introduced showing that the duties of the abolished position aggregated four hours per day of the class of work indicated in the rule at the time when the employee was displaced.

Insofar as Paragraph (e) of Rule 20 is concerned, the Board submits that, while an established position was discontinued or abolished, there was no new position created under a different title to cover the same class of work, but at the time the position was abolished such work as remained was distributed among the remaining employees.

As for the latter paragraph of Paragraph (g) of Rule 20, as presented by the carrier, this has no bearing on the claim at issue and could not be considered except in its connection with the preceding paragraph, and in its application to the entire rule.

With reference to the work remaining at the time the claimant in this dispute was displaced and its proper classification, the parties are in agreement that more or less of the work formerly performed by the claimant was distributed among and continued to be performed by other employees, some of whom were and others of whom were not covered by the existing agreement between the parties. There is, however, a wide variation in the statements made as to the amount of work distributed, the manner of its makeup and the actual time consumed in its performance, which the Board is unable to reconcile from the facts presented.

This variation is particularly evidenced in the statements as to the amount of clerical work turned over to and required by the carrier from the round-house foreman, an employee not represented in the agreement between the parties, and transferred to the clerks of the first and second tricks, and the calling of crews for road and yard service that was turned over to laborers, and whether such calling was that designated in paragraph 3 of Rule 1 and the exceptions thereto, or whether it was of such a character as to require a different classification.

In view of these conflicting statements the Board is compelled to remand this claim to the parties to establish by conference and negotiation the amount of the work distributed, the manner in which such amount was made up to effect its completion, and the amount of time consumed in its makeup and performance and, in the event that the claim cannot be disposed of through such conference and negotiation, to resubmit the differences to the Board with a record of the facts brought out in such conference.

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 is remanded for conference and negotiation between the parties in the effort to reconcile conflicting statements made with relation to the work distributed and the time consumed in its performance.

AWARD

Claim remanded for conference and negotiation between the parties in accordance with last paragraph of the Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of November, 1937.