

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim for restoration of position of Clerk, rate \$102.75 per month, Erick, Okla., and reimbursement of all employees affected for monetary loss sustained account this position being discontinued effective January 17, 1937, and position of Caretaker, rate \$20 per month, put on."

EMPLOYEES' STATEMENT OF FACTS: "Effective January 17, 1937, position of Clerk, rate \$102.75 per month, assigned hours 11:30 P. M. to 8:30 A. M., Erick, Okla., was discontinued and in lieu thereof position under title of Caretaker, rate \$20 per month, with no definitely assigned hours, was put on. Prior to discontinuing position of Clerk the force at Erick consisted of the following:

Title	Rate	Assigned Hours
Agent-Operator	62¢ per hour	8:00 A.M.-5:00 P.M. (1 hour for lunch)
Clerk	\$102.75 per month	11:30 P.M.-8:30 A.M. (1 hour for lunch)

The caretaker was definitely assigned to work one passenger train arriving at Erick on schedule at 6:01 P. M., another passenger train arriving on schedule at 12:45 A. M., and another passenger train arriving on schedule at 3:45 A. M. The position of clerk formerly performed this work in connection with the trains arriving at 12:45 A. M. and 3:45 A. M. The caretaker also was instructed to deliver freight and to work the regular line run meat cars, which formerly were handled by position of clerk. The carrier does not consider the position of caretaker as coming within the scope of the Clerks' Agreement."

CARRIER'S STATEMENT OF FACTS: "On January 17, 1937, position of Clerk, Erick, Oklahoma, rate \$102.75 per month, was discontinued. A caretaker, rate \$20 per month, was appointed effective same date to handle baggage, mail and express to and from Trains 111 and 52."

POSITION OF EMPLOYES: "Rule 1, Scope, of Agreement between the carrier and the Clerks' Organization revised and effective as of January 1, 1931, reads, in part, as follows:

'RULE 1. SCOPE. These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

(1) Clerks.

(a) Clerical Workers.

"The work of meeting Trains 111 and 52 and handling baggage, mail and express at Erick, Oklahoma, is being handled in accord with the practice in effect at many points for many many years and does not constitute a violation of any agreement with clerical or other carrier employes. There is no authority in the current Clerks' Agreement on which your Board can predicate an award directing this carrier to reestablish a position of clerk at Erick. An award that caretakers are subject to the Clerical Schedule would be equivalent to writing a new rule into that schedule. Such action, of course, cannot be taken because the Railway Labor Act gives your Board only the power of declaring obligations created by the contracts which have been negotiated between the carrier and its employes. The obligations must be created by the contracts. Nowhere in that Act is there any authority for adding to, taking from or changing the language of a negotiated rule or for adding new rules, and therefore, your award must necessarily deny the claim of the employes, because to do otherwise would require your adding rules to the negotiated agreement. The present Clerical Agreement clearly excepts those parties paid less than \$30 per month under the conditions existing at Erick, but even if the rules did not specifically except such caretakers, the practice of appointing caretakers at many stations is so well established through many years' practice that it has become a recognized condition by both the employes and the carrier, and would require a new rule being written into the Agreement which would abrogate such a practice.

"The claim of the employes should be denied, because it has no support or warrant under the Clerical Agreement or past practice."

OPINION OF BOARD: This is another of the series of cases referred to in Award No. 607.

The record in this case clearly indicates that seniority rules were violated when the carrier—in turning over work to the alleged caretaker, a person not covered by the agreement—did not permit employes in the seniority district to continue to perform the work formerly attaching to the position of clerk. The carrier also violated Rule 69 and Joint Interpretation thereto when it discontinued a regular position and created a new one (improperly called caretaker) covering, at least in part, relatively the same class of work for the purpose of reducing the rate of pay or evading the agreement; further, Joint Interpretation to Rule 69 was also violated when the work or duties formerly attaching to the position of clerk was reassigned without the matter being handled in conference with the employes' representatives.

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 employes involved in this dispute are respectively carrier and employes 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 carrier violated the seniority rules and Rule 69 and Joint Interpretation to the latter.

AWARD

Claim sustained for reestablishment of position and reparation for wage losses sustained by affected employes.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of April, 1938.