

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

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

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

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Chicago, Rock Island and Pacific Railway for the restoration of position of Interchange Clerk, rate \$117.00 per month, Peoria, Ill., and reimbursement for all monetary loss sustained by employees account position of Interchange Clerk being discontinued February 15th, 1937."

EMPLOYEES' STATEMENT OF FACTS: "Effective February 15th, 1937, position of Interchange Clerk, rate \$117.00 per month, assigned hours 8:00 A. M.-5:00 P. M. (one hour for meal), in the office of Freight Agent at Peoria, Ill., was discontinued and all of the work formerly handled on this position assigned to the telegraph operators, in the yard office, who are not covered by the Clerks' Working Rules Agreement which is dated January 1st, 1931."

POSITION OF EMPLOYEES: "Rule 1, Scope, of Agreement between the carrier and the Clerks' Organization revised and effective as of January 1st, 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.

'(b) Machine Operators (such as typewriters and calculating machines).' * * *

"Section (j) of Rule 1 (Scope) reads as follows:

"The title of positions now within the scope of this schedule will not be changed for the purpose of removing such positions from application of these rules, nor will the changing of the title of a position without actual reclassification of the duties assigned operate to remove the position from the scope of this schedule, unless by mutual agreement between the railway and representatives of the employees."

"For a period of as long a time as telegraphers have been used on this railroad, holders of telegraphic positions so classed have been required to perform clerical work and without regard to the amount of such clerical work, and therefore such clerical work has become a part of the regular recognized work of telegraphers. We can not emphasize too strongly to your Board the fact that for at least the duration of the agreements with this carrier and its telegraph employees, extending back for 34 years, it has been understood by the telegraphers that they would perform clerical work in such amounts or quantities as was required of them when it could be performed by them during their regularly assigned hours; and we also again wish to emphasize the fact that such a practice was known to the clerks on this property before there was an organization representing that class of employees, and the practice has been known to and recognized by these employees as well as their representatives since an organization has been in existence and a contract covering clerical employees has been effective on this property. The practice of telegraphers and agents performing clerical work, even to the extent of performing work formerly performed by employees in clerical positions later discontinued, is so well established that it has become a completely recognized rule, binding upon both the clerks and telegraphers, as binding as other rules which have been expressly written into the schedules of these employees. The Clerks' Organization has known of, recognized and concurred in the right asserted by the carrier of having clerical work performed by telegraphers and agents where telegraphic and agency forces were maintained for required supervision, agency work or telegraphing.

"From the above analysis of this claim it is clear that 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 Interchange Clerk at Peoria, nor is there any authority for requiring the carrier to pay other clerical employees other than the rate of pay which has been specified and agreed to as being properly applicable to the positions which they have occupied since February 15, 1937. If an award should be made denying the carrier the right to handle its station work as is being done at Peoria, this will be equivalent to writing a new rule into the Clerical Schedule, which would say, in substance, that the Clerical Schedule applies to any and all employees of the carrier doing clerical and station work, and that the telegraphers are to be deprived, without negotiations, of work which they have been performing for 85 years.

"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 employees. The obligations must be created by the contracts. Nowhere in the Act is there any authority for adding to or taking from, or for changing the language of a negotiated rule, or for adding new rules; and, therefore, your award must necessarily deny the claim of the employees, because to do otherwise would require your adding rules to the negotiated agreement."

OPINION OF BOARD: This case presents in part the same subject as dealt with in the preceding Award No. 638.

Here, however, only a portion of the work of the abolished position was assigned to a telegrapher; for the reasons stated in that award this alone would not be a violation of the agreement.

However, the position was discontinued and its work assigned without conference, in clear violation of Rule 69 and its joint interpretation and therefore the claim should be sustained.

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 abolition of the position and reassignment of its duties was violative of Rule 69 and its joint interpretation.

AWARD

Claim sustained for restoration of position and reparation to affected employees for wage losses sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of May. 1938.