

Award No. 752
Docket No. CL-750

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**

HARRIMAN AND NORTHEASTERN RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim for restoration of position of Clerk, rate \$4.75 per day, Superintendent's Office, Harriman, Tennessee, and that the occupant of the position at the time it was abolished, Mr. C. J. Cooper be reimbursed for all monetary loss suffered retroactive to December 11, 1937."

EMPLOYEES' STATEMENT OF FACTS: "Effective December 11, 1937, the position of Clerk, rate \$4.75 per day, Superintendent's office, Harriman, Tennessee, was abolished and the duties of the position which were:

- Check Yard and Industries daily.
- Keep record of all cars loaded and unloaded.
- Make report weekly on demurrage.
- Make switching records of all cars handled in switching service.
- Make daily records of all cars handled in yard and train service.
- Make daily interchange records of all cars delivered to foreign connections.
- Make switch list for yard crews and look after switching.
- Keep records of all cars weighed which include all cars loaded on system.
- Give mines copies of all weights of coal from respective mines.
- Furnish weights to Coal Brokers.
- Keep records of all trains on train roster.
- Put weights on all waybills.
- Receive all orders for cars to be loaded from industries.
- Make report of cars handled to Supt. Car Records, Atlanta, Ga.
- Carry waybills and messages to and from Southern Railway Station and telegraph office.
- Keep record of all gasoline and inflammables unloaded and make report to the State of Tennessee.
- Issue bill of ladings and answer all local telephone calls.
- Seal cars loaded and look after seal records.

were assigned to the following employees who hold no seniority rights to the work, Chief Clerk-Dispatcher, Train Conductor and Clerks employed by the Southern Railway Company.

There is in evidence an agreement between the parties bearing effective date of September 1, 1926, from which the following rules and Article thereof read:

'(c) The transfer of rates from one position to another shall not be permitted. Except when changes in rates result from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position.

'(d) Efforts will be made to furnish employment (suited to their capacity) to employees who have become physically unable to continue in service in their present position.

'(e) Except as otherwise provided in these rules, established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules.'

"Attention is called to the fact that the employees make no contention under the applicable paragraphs of the contract. Nothing which was done infringes upon those rules, but, to the contrary, is entirely consonant therewith; this rule is very clear what the Carrier may not do, but what it did in the instant case is not debarred. Knowing this the employees made no claim under this rule, but attempt to strain other rules to fit their case; had the contract intended to deny to the Carrier the right to do what was done here it would have been easy to cover it in the pertinent rule; it was not so intended; it was not so included.

"In the handling of this case, while other decisions were cited in the correspondence, employees particularly stressed Award 425 as sustaining their claim. Award 425, Referee Davaney, cites as its authority Award 180, Referee Spencer. In Award 180 a case was involved where certain work of the Carrier was turned over to a Bureau. Award 425, Referee Devaney, involved certain work of the Northern Pacific which was turned over to employees of the Chicago, Milwaukee, St. Paul and Pacific, or, as the Referee expressed it, 'farmed out.'

"It hardly seems necessary to dwell on the fact that these cases are not analogous. The work previously performed by Mr. Cooper has not been turned over to aliens; it has been partially abolished, partially performed by the Chief Clerk in the same office, and such part of it as is primarily agency work has been assigned to agency employees of the Harriman and Northeastern (joint). The reasoning in Awards 180 and 425 are not pertinent here; the situation is wholly different.

"While it is deemed unnecessary because patently apparent to go into details as to other awards cited, suffice it to say that in none are the facts or circumstances similar to those here found and are not controlling.

"The facts are that with the abolishment of certain of Cooper's work, the balance could be absorbed by available clerks of the Carrier, all receiving higher rates, and thus a position no longer needed could be abolished. To grant the petition would merely be to require the employment of an employee not needed to handle present volume and would be a needless, unnecessary and unrequired expense. There is no rule of schedule which prevents what was done and the Board is most respectfully requested to deny the claim. Carrier says, for the information of the Board, that it was not requested to join in submitting this case."

OPINION OF BOARD: There is no material discrepancy in the controlling facts as submitted by the parties in this case. Both state that when the position of Clerk, rate \$4.75, Superintendent's Office at Harriman, was abolished, the duties formerly attaching to that position were assigned to the so-called Chief Clerk-Dispatcher, a position of an excepted nature, and to other Clerks employed in the joint Agency at Harriman. They also agree that the Chief Clerk-Dispatcher position is not within the scope of the current agreement, and that the Clerks in the so-called joint agency are in a

separate and distinct seniority district from the district in which the clerical position in dispute was situated, prior to its abolishment. The other facts are immaterial.

As to assigning work within the agreement to other employees excepted from the scope thereof, this Board has consistently held such action to be in violation of collective agreements. It was so held on this particular carrier in Award Nos. 385 and 386. That principle is hereby reaffirmed. See Award Nos. 458, 631, 637, 736 and the preceding Award No. 751.

With respect to assigning the remaining clerical duties of the position in question to Clerks in a different seniority district, arbitrarily, this, also, repeatedly has been held to be in violation of the seniority rules of collective agreements. Compare Award Nos. 99, 198, 199, 610, 612, and 718. Rule 4 (o) of the agreement between the parties here expressly prohibits the disturbance of existing seniority districts and the vice of so doing is pointedly evident in this instance since the employee displaced had no seniority elsewhere and upon the removal of the only work on his district was bereft of opportunity to exercise rights acquired through many years of service.

The claim of the petitioner should, therefore, 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 carrier violated the current agreement as indicated in the Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1938.