

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Spencer, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that,

"(1) The Carrier violated agreement rules when it nominally abolished position of Clerk, Desk No. 1, rate \$5.04 per day, on March 31st, 1938, and effective April 1st, 1938, established a position of Station Helper, Rate \$2.63 per day, to perform the duties formerly assigned to incumbent of clerical position at Kasota, Minnesota, and that

"(2) The Carrier shall be required to reimburse employees affected for wage losses sustained through such rules violation."

EMPLOYEES' STATEMENT OF FACTS: "For many years prior to April 1st, 1938, there was maintained at Kasota, Minnesota a position classified and rated as Clerk, Desk No. 1, \$5.04 per day.

"Such classification and rate was established by agreement between the Carrier and the Brotherhood as a result of Wage Agreement effective June 16th, 1928, and National Wage Agreement of August 4th, 1937.

"This position was classified and rated based on the following duties:

Expensing
Revising
Abstracting
Writing up Pick Up and Delivery forms
Keeping demurrage records, two sets,
straight plan and average agreement
Check yard
Deliver and receive freight
Make switch lists

Make collections
Keep cash book records
Make remittances
Keep car interchange record
Waybill outbound freight
Weigh cars
Maintain pump station
Sell tickets
Answer telephone inquiries
regarding freight and tickets

RENDER THE FOLLOWING MONTHLY REPORTS:

Two balance sheets, one each to Chicago and Northwestern and Chicago, St. Paul, Minneapolis and Omaha Railways. Form 61.
Unsettled credits
Carload and l. c. l. forwarded and received Form GFD 34
Comparative statements Form GFD 31 - 34 - 48 and 28
Earnings report Form 117
Cars loaded Form 41
Inventory car report

Brotherhood of Railway & Steamship Clerks, is justified and entitled to abolish such position of clerk as was done in this case and to create a position of station helper or any other employe in the class of employ recognized within the scope of the clerks' schedule.

"The Board's attention is invited to the provisions of the rules supporting our position, as follows:

Rule 1, 'Class 2,' paragraph (b) recognizes position of 'station helper,' and, therefore, such positions are authorized. In this connection for the information of the Board, desire to state that station helpers have been assigned on this property for many years. In 1928, there were thirty-one (31) station helper assignments on the property; on January 1st, 1936, there were thirty-two (32) station helper assignments.

Rule 2 defines a clerk and qualifications thereof as one who regularly devotes **not less** than four hours per day to clerical duties named. as the assigned clerk as Kasota had **less than** four hours' work as a clerk per day, the position ceased to exist, and it was abolished.

Rule 15 provides the manner in which forces will be reduced. This rule was followed, and there is no claim as we understand it that this provision of the rule was not complied with.

Rule 57 provides for rate of pay for new positions in conformity with rates for similar positions on same seniority districts. The provisions of this rule were adhered to.

"The Board's attention is also invited to the rules of the schedule quoted by the Committee as supporting their position. It is our denial that the provisions of any of these rules have been violated by the Carrier or that they are applicable in this case for reasons as shown below:

Rule 59—There has been no transfer of rates from one position to another;

Rule 60—There has been no employe assigned to a higher rated position. Such position ceased to exist as it was abolished;

Rule 61—The established position was abolished only for the reason that the amount of work available was less than that defined as belonging to a clerk under the provisions of Rule 2 of the schedule;

Rule 65—Not at point, there being no claim that the rate paid the position of station helper is not in accord with the schedule.

"This claim has been discussed in conference, and the rules of the schedules quoted have been referred to, as has Award 615, Third Division, National Railroad Adjustment Board, which, the Carrier claims, fully supports its position as to it being proper to assign clerical work to employes who are under another schedule.

"We submit the Carrier was within its rights under the provisions of the schedule in abolishing the position of clerk, Desk 1, at Kasota, and establishing the position of station helper. We ask the Board so to find, and to deny the claim."

OPINION OF BOARD: In the circumstances of this dispute, the Division is of the opinion that the carrier in the action complained of violated Rule 61 of the Agreement between the parties.

Established positions shall not be discontinued and new ones created under a different title covering the same work for the purpose of reducing the rate of pay or evading the application of these rules.

The petitioner stated in its submission that "the carrier admits abolishment of clerical position March 31, 1938, and the establishment of lower rated Station Helper position effective April 1, 1938, with instructions of Superintendent to Station Agent that incumbent of Helper's position was not to be permitted to perform more than three (3) hours and fifty-nine (59) minutes of clerical work per day." The carrier did not deny the accuracy of this statement. Subsequent to the discontinuance of the position in question, the station agent reported to the superintendent that the clerical work being performed by the incumbent of the newly created station helper's position consumed approximately three hours and forty-five minutes of the latter's time each day. In view of these admissions, it is fair to assume that as of the time this dispute arose the claimant was devoting approximately three and three-quarters to four hours of time to clerical work as defined by Rule 2 of the Agreement.

At the suggestion of the Division the parties conducted a joint check of the claimant's activities on November 29 and 30, 1938. This check indicates the following division of time on the first day:

2 hours and 43 minutes	.....	Clerical work
3 " " 4 "	.....	Non-clerical work
2 " " 13 "	.....	No work performed

It indicates the following division of time on the second day:

2 hours and 33 minutes	.....	Clerical work
1 hour " 33 "	.....	Non-clerical work
3 hours " 54 "	.....	No work performed

In passing it is noted that on the first day the claimant washed windows, which, it may be assumed, is not a daily occurrence in his various activities. It is clear, therefore, that the second day is more representative of the nature of the claimant's duties, than the first. The representatives of the parties in conducting the check classified all time between the performance of different duties as "dead" or "waiting" time.

Rule 2 of the Agreement defines a "clerk" as an employee who regularly devotes not less than four hours to the kind of work therein described as clerical. In the application of this test, precedents are not always helpful because the circumstances vary from case to case. As a matter of fact, the test cannot be applied with mathematical precision. It does not seem fair or equitable, as urged by the carrier, that all time between tasks, particularly between clerical tasks, should fall in the category of non-clerical time. A certain amount of such time is necessarily incident to the tasks of a clerk, and should be included in the determination of the status of an employee within the meaning of Rule 2.

The evidence of record justifies the finding that the claimant was at the time this dispute arose a **clerk** within the meaning of Rule 2.

This award is not to be construed as a limitation on the privilege of a carrier to discontinue a position when the work involved has really disappeared; nor to deny it the privilege of assigning clerical work to employees covered by the Telegraphers' Agreement within the limits set forth in this Division's Award No. 615. Its significance is limited to the special circumstances disclosed by this record.

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 in the circumstances disclosed by the record the carrier violated Rule 61 of the Agreement between the parties.

AWARD

The claim is sustained in accordance with the special finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1939.