

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Harris L. Danner, Referee

**PARTIES TO DISPUTE:**

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

**CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY  
COMPANY**

(H. D. Pettibone, Trustee)

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate its agreement with this Brotherhood when on September 9, 1939, it nominally discontinued position classified as A. F. E. Clerk in office of Superintendent of Motive Power, Lafayette, Ind., rate \$185.20 and concurrent therewith removed the substantial and preponderating duties of said position from the scope and operation of the Clerks' Agreement by assigning same to the incumbent of an excepted position, and

"That said position of A. F. E. Clerk shall now be restored and assigned in accordance with the rules of said agreement, and further,

"That all employees involved in or affected by said violation of said agreement shall be reimbursed for all monetary losses sustained."

**EMPLOYEES' STATEMENT OF FACTS:** "Prior to Sept. 9, 1939 the carrier maintained in the office of Superintendent of Motive Power at Lafayette, Ind. a clerical position classified as A. F. E. Clerk and rated by agreement with this Brotherhood at \$185.20 per month. Said position was in existence on the effective date of adoption of the general working agreement governing hours of service, working conditions and rates of pay of the class of employees represented by this Brotherhood, said date being March 30, 1935 and said agreement being made effective as of April 16, 1935.

"The duties and responsibilities which constituted the substance of said position and which governed its classification and rate of pay can best be identified and proven by the provisions incorporated in Seniority Bulletin No. 47 issued under date of January 5, 1939 by Mr. W. M. English, Superintendent of Motive Power, when advertising a temporary vacancy on said position. Copy of said Bulletin No. 47 is attached hereto and made a part hereof, same being identified as Brotherhood's Exhibit No. 1.

"Under date of September 7, 1939 the carrier posted its Seniority Bulletin Notice No. 62 stipulating that 'Effective with the close of business Saturday September 9, 1939, the position of A. F. E. Clerk in this office is abolished.'

"All of the duties of this position as recorded in Seniority Bulletin No. 47 (Brotherhood Exhibit No. 1) continued to exist on and after September 9, 1939.

"All matters herein referred to in support of Carrier's position have been the subject of correspondence or discussion with the Employees' Committee and its duly accredited representatives.

"Carrier desires notice of hearing and an opportunity for oral presentation thereat."

There is in evidence an agreement between the parties bearing effective date of April 16, 1935.

**OPINION OF BOARD:** We are not at all satisfied with the evidence as disclosed by the record in this case. There is a sharp conflict between the factual conditions as claimed by the carrier and the factual conditions as set out by the employees.

The correspondence as to the discontinuation of this position and the restoration of the position is of some value in determining the facts in that it discloses a possible interpretation of the agreement by the parties.

Only by taking the record, the oral statements and arguments liberally are we justified in reaching the conclusion hereinafter set out.

The only question involved in this matter is whether or not the carrier can discontinue a regularly established position covered by the agreement between the carrier and the employees, for which there is an agreed rate of pay, and assign the duties or a portion of the duties to employees not covered by the agreement.

The record bears out the contention that on the 1st day of December, 1938, the carrier discontinued the position of A. F. E. Clerk, who came under the agreement, and assigned a part or portion of his duties to employees who were not covered by the current agreement. That is, employees who were in excepted positions. Thereafter, later in the same month, the carrier did restore this position. The employees waived a part of their pay during the time the position was discontinued.

The carrier contends that because the A. F. E. Clerk performed a work of similar nature as that performed by the occupant of an excepted position, the carrier could assign the work of the A. F. E. Clerk to the Accountant occupying the excepted position and that the occupant of the excepted position then held seniority rights under the agreement. Various opinions have been cited, however a reading of the opinions shows a marked dissimilarity in the facts. No doubt, there must be a reasonable flexibility in the assignment of work in the railroad industry and that such flexibility is essential to the welfare of both carrier and employees. However, it is also well established that work coming within the scope of the agreement may not be removed from the agreement and assigned to the employees not covered by the terms and that the carrier may not arbitrarily take work from the scope of the agreement, as this would be destructive of the agreement. This rule has been adopted in several opinions. For sustaining this view, see Awards Numbered 385, 386, 458, 631, 637, 736, 751 and 1122.

As to whether or not the occupant of the position of the A. F. E. and Valuation Accountant holds seniority rights under the agreement, it is understood that this employee did not at any time occupy a position now within the scope of the current agreement. Therefore under the provisions of Rule 25, the employee not having earned any rights under the agreement could not retain rights which they had not possessed or earned. See Award Numbered 591.

We hold that the carrier violated the current agreement when it discontinued the position of A. F. E. Clerk and assigned all or a portion of the duties thereof to employees not covered by the agreement.

**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 current agreement as contended by the petitioner and shall now restore the position of A. F. E. Clerk and reimburse all involved or affected employes for monetary losses sustained because of such violation.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1940.