

**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 18, 1939 it nominally discontinued position classified as Accounting-Cash Clerk in the Louisville, Ky. Freight Station, rate \$154.32, and concurrently 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 (Chief Clerk), and

"That said Position of Accounting-Cash Clerk shall now be restored and assigned in accordance with the rules of said agreement, and further,

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

EMPLOYES' STATEMENT OF FACTS: "Prior to September 18, 1939 the Carrier maintained in the Louisville, Ky. Freight Station a clerical position classified as Accounting-Cash Clerk and rated at \$154.32 in accordance with the working and wage agreements between the Carrier and this Brotherhood.

"Effective September 18, 1939 the Carrier nominally abolished or discontinued said classified position while all of the duties thereof remained in existence. Concurrent with the discontinuance of said position, the carrier removed the substantial and preponderating duties thereof from the scope and operation of the Clerks' Agreement by requiring the incumbent of the position of Chief Clerk, an excepted position, to perform duties as hereinafter indicated.

"On and after September 18, 1939 the duties of this position were assigned and performed as follows:

Duties	Assigned to
"1. Abstracting freight notices	Chief Clerk
"2. Rendition of freight notices	Chief Clerk
"3. Collecting freight charges	Chief Clerk
"4. Listing cash and check collections	Chief Clerk
"5. Preparing deposit slips and depositing funds in the bank	Chief Clerk
"6. Listing items collected in proper accounts and rendition of daily balance sheet	Chief Clerk
"7. Posting all items collected	Accountant

agreement, but in the opinion of the Board it is said 'and it is the opinion of the Board that the position of Master Car Builder's Accountant was excepted from the terms of the agreement because the employe was at the time chiefly engaged in work entirely outside the scope of the agreement and not to save a position for an employe when the carrier desired to reassign him to the duties of an Accountant, which work is admittedly covered by the agreement.' This is entirely different from the case under discussion in that the Chief Clerk is not and has not been engaged in work entirely outside the scope of the agreement, because as shown by the facts he has always performed clerical work of any nature required. It has always been the established practice to require clerical work from positions listed as excepted, and further, clerical work has been interchangeable between the so-called excepted positions and the other clerical positions.

"The Carrier submits:

1. It has complied with the schedule agreement in every respect, and has strictly complied with all the rules contained therein,
2. It has been the practice, both prior and subsequent to agreements with this organization, to perform the clerical duties in the manner set out in this submission,
3. It has not violated the scope rule or any other rule of the Agreement,
4. In accordance with evidence submitted herein Award should be rendered in favor of the Carrier.

"All matters herein referred to in support of the Carrier's position have been the subject of correspondence or discussion with the Employes' 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: The facts and the contentions of the parties are sufficiently set forth in their respective submissions appearing above.

This question has been determined in Award Number 1209 and we have reached the same conclusion herein.

It has been well established that carriers have the right to discontinue clerical positions when only a small portion of the duties which constitute the assignment remained to be performed, yet, 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 employes not covered by the terms. To arbitrarily take work from the scope of the agreement and assign such remaining duties to employment excepted from the agreement or not covered by the agreement would be destructive of the agreement. For sustaining this view see Award 385, 458, 571, 631, 637, 751, 752, 754, 791, 1122 and 1209.

The Board finds that 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 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.

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.