

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Referee Richard F. Mitchell

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—EASTERN LINES**

STATEMENT OF CLAIM: "Claim of the Brotherhood that Management's action in abolishing position of Shop Timekeeper, Joliet, Illinois and assignment of routine clerical duties formerly attached to that position to employes without the scope and operation of the Clerks' Agreement violated the rules of said Agreement; and

"Claim that the position shall now be reestablished, the last regularly assigned incumbent returned thereto and all employes affected fully compensated for all wage losses sustained as a result of such Agreement violation retroactive to May 3, 1938."

EMPLOYES' STATEMENT OF FACTS: "Prior to May 3, 1938 there existed and had existed for a long period of time an established clerical position titled Shop Timekeeper, daily rate of pay \$5.67, at Joliet, Illinois. On the date mentioned the position was abolished, and the duties thereof assigned to employes holding no rights under the Clerks' Agreement.

"The principal and preponderating duties assigned to the position and the approximate average amount of time devoted to each as of date of abolishment follows:

Check Enginemen's Register	40"	Daily
Handle Enginemen's Trip Tickets (Book, Check, etc.).....	30"	"
Register Carmen on Clock Cards.....	30"	"
Prepare Distribution of Labor Reports.....	30"	"
Render Report of Cars on Repair Tracks.....	30"	"
Render Train Control Report.....	30"	"
Render Overtime Reports	20"	"
Maintain Pay Roll Record.....	20"	"
Typing and Correspondence.....	2'00"	"
Answer Telephone and Run Errands.....	30"	"
Render Daily, Weekly and Monthly Fuel Reports.....	15"	"
Daily Report of Cars on Hand.....	15"	"
Maintain Daily Record of Water Treated.....	10"	"
Miscellaneous Incidental Clerical Work.....	1'00"	"
	8'00"	"

OPINION OF BOARD: This case came to the Board in the form of a joint submission. It is the contention of the Organization that prior to May 3, 1938 there existed and had existed for a long period of time an established clerical position, title, shop timekeeper, Joliet, Illinois, at a daily rate of pay of \$5.67; that on the date mentioned the position was abolished and the duties thereof assigned to employees holding no rights under the Clerks' Agreement. It is also shown that a position of car clerk was established at Joliet on March 3, 1940 with the same duties and rate of pay as were attached to the former position of shop timekeeper. The Organization concedes that if the claim is sustained the employees affected would be entitled to compensation only between the dates of May 3, 1938 and March 3, 1940.

The primary cause of this dispute is the work taken over by the foreman and coal chute foreman.

In handling the case a dispute arose between the parties in regard to the volume of work assigned to employees not covered by the Clerks' Agreement. On July 19 and 20, 1939 a joint check was made which revealed that the roundhouse foreman and coal chute foreman were performing a substantial amount of work formerly attached to the abolished position. It is the contention of the Carrier that a survey was made of work being performed by clerical employees in the mechanical department on the Illinois Division in the period just prior to May 1938. As a result of this survey it was found that certain unnecessary reports were being prepared at some of the smaller points where only one clerical employee was located. With the elimination of these unnecessary reports and rearrangement of the work, the Carrier felt that the mechanical department foreman at Joliet could, without assistance, perform along with his other duties the necessary clerical work at that point by transferring what the Carrier refers to as a small amount of work to employees at other points.

The joint check shows that the amount of clerical work performed by the roundhouse foreman and coal chute foreman, formerly done by the abolished position, was three hours and three minutes per day.

So we are confronted with a case in which there was a substantial amount of work remaining to be done after the position was abolished. This Board has been confronted with similar cases presented by this same Carrier covering the identical current Agreement involved in this case. The Referee has made an examination of the submission in those cases and finds that the arguments in Awards 1254 and 1314 are very similar to the arguments submitted in this case upon behalf of the Carrier to show why claim should be denied. The Carrier in its submission cites Award 637. We quote from its submission:

"We know that the agreement does not prescribe what was done at Joliet and to our knowledge the Board has never violated the principle announced by it in Award 637 that 'the carrier is within its right in abolishing positions when the work has disappeared or substantially reduced in volume.'"

The Carrier failed, however, to quote the very next sentence in Award 637, which is as follows:

"The Board has also repeatedly held that the carrier cannot discontinue or abolish positions and assign the duties thereof to employees not covered by the agreement."

This Board has repeatedly held that while carriers are free under collective agreements to abolish clerical positions when the duties thereof have disappeared or substantially been reduced in volume, yet the Board has also consistently held that such duties as remain must be assigned to employees covered by the current agreement and for whose benefit the agreement is made. See Awards 385, 458, 637, 753, 1122, 1254, and 1314.

In the recent award, No. 1254, this Board was confronted with almost the same question as it is confronted with in this case; the same railroad and the same contract are involved. This Board sustained the claim, stating:

"The essential facts in this claim are not in dispute. On May 10, 1938, the position identified as Roadmaster's Clerk at Brownwood, Texas was abolished. Some of the work of this position was transferred to Temple, Texas and a part of the work transferred to the two District Roadmasters at Brownwood Texas. These two Roadmasters are not covered by the current agreement. Controversial contentions run only as to the volume of work transferred to the Roadmaster, and with respect to the right of the carrier to so remove the work arbitrarily. It is admitted that entirely apart from such routine clerical work as these two Roadmasters handled as a natural incident to their regular duties, a substantial amount of work previously performed by the clerk was transferred to them.

"In many awards this Board has held that while carriers are free to abolish positions when the majority of the duties do not remain to be performed thereon, it likewise consistently has held that the remaining duties must continue to be performed by employees within the scope of the applicable agreement, and that the remaining work cannot be turned over to employees without the agreement. (See Awards Numbers, 385, 458, 571, 609, 630, 631, 637, 751, 752, 753, 754, 791, 1122, 1209, and 1210.)"

It is true that there is a dissenting opinion to Award 1254 but in Award 1314, which was decided after Award 1254, to wit, the 8th day of January 1941, this Board, confronted again by almost the identical question as in this case, covering the same current agreement with the same railroad, again sustained the claim of the employee. There is no dispute in this record but what a substantial amount of clerical work, after the abolishment of the position in question, remained to be performed and that it was performed by employees not within the scope of the current Agreement. This, in view of the former awards of this Division, is a violation of the current Agreement and the Carrier must now make all affected employees whole for wage losses sustained as a result thereof.

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 claimed by the petitioner.

AWARD

Claim sustained and reparation allowed to all affected employees from May 3, 1938 to March 3, 1940.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1941.