

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl B. Stiger, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the New York Central Railroad for the restoration, effective May 29th, 1940, of Position No. 47 in the Accounts and Statistical Department, Rate \$184.20 per month, in the office of the Departmental Accountant, Detroit, Michigan, and reimbursements of monetary losses sustained by any employees due to discontinuing Position No. 47.

JOINT STATEMENT OF FACTS: Position No. 47, Clerk, Rate \$184.20, in the Accounts and Statistics Group in the General Departmental Accounting office at Detroit, Michigan, was abolished as of May 29th, 1940 when it became vacant, due to the death of A. E. Kempthorn, and the duties of the position were distributed to other clerks under the agreement in the same Group, as follows:

Description	Hours Required To Compile
Transportation Labor Distribution	8
Payroll Totals by Divisions-Transp. Dept. (Complete Month)	7
Frt. Train Crew Cost by Direction—16th to end of month	6
Train Crew Exp. in connection with operation of "The Mercury"	1
Comparative Statement of Payrolls—Form 6-A — Transp. Dept., Toledo Div., Lines West	10
Comparative Statement of Payrolls—Form 6-A — Transp. Dept., Toledo Term., Line West	7
Comparative Statement of Payrolls—Form 6-A — Supplemental—MC North Toledo	2
Overtime Statement—Toledo Div., Transp. Dept.—Line West	10
Overtime Statement—Toledo Term. Dist., Transp. Dept.—Line West	10
Overtime Statement—Supp. MC No. Toledo, Transp. Dept.—Line West	1
Comparative Statement of T&E Constructive Allowances Form DA-12 — Transp. Dept. Line West-Recapitulation	4

While the employees have argued that the abolishment of Position No. 47 constitutes a violation of sub-section F of Item 2, that sub-section has no bearing on the Kempthorn case. Sub-section C is not qualified or restricted in respect of the 51 percent provision in sub-section F. On the contrary, sub-sections A, B and C are specific in their application to instances where positions have become permanently vacant. These sub-sections specify the positive action which will be taken in such instances, depending on the circumstances as to which paragraph will apply. On the other hand, sub-section F does not provide for positive action of any kind, but merely states that the provisions of the special understanding **do not prohibit** the permanent abolishing of **any** position on which 51 percent or more of the work has disappeared or been discontinued. It is therefore obvious that sub-section F deals with an entirely different situation, is in no way involved in the Kempthorn case; that sub-section C is directly applicable and is the particular rule which your Board must interpret in this dispute.

Reverting now to our denial, in the first paragraph under this caption (Item 5), that any rule of the Clerks' Agreement is applicable, the carrier directs the Board's attention to the final paragraph of the understanding of March 19, 1937 (Joint Exhibit "B") reading:

"Commencing July 1, 1937, the rules of the New York Central agreement will apply **where not in conflict with the foregoing.**"

(Emphasis added.)

"The foregoing" included Section 4. No rule "of the New York Central agreement," even if any were applicable, could take precedence over the provisions of Section 4, which contained a guarantee running to the employee and not to the position. The right of the carrier under Section 4 to discontinue positions is recognized in the July, 1939, understanding (Joint Exhibit "A"), the provisions of which restrict that right to the extent only of prescribing a method for determining **which** positions shall be abolished. It is therefore evident that the employees' citations of rules of the Clerks' Agreement serve no useful purpose whatsoever.

The claim should be denied forthwith.

In conclusion, the carrier directs the Board's attention to its (the Board's) own opinion in Award No. 1314 (Docket No. CL-1336) from which the following pertinent extracts are quoted:

"There is no dispute as to the right of the Carrier to abolish a clerical position which is subject to the agreement and distribute that work among other clerks subject to the agreement, at least in so far as such distribution does not make a new position out of any of the positions to which it is given, a matter which in this case does not arise. Nor is there any dispute as to the right of the Carrier to abolish a position and entirely abolish the work connected therewith.

"Certainly in many of the agreements which have come before us and in this one there is no express prohibition against abolishing a position and dividing the work wherever the carrier desires. Article XII, Section 6, appears to prohibit the discontinuance of a position and the creation of a new one for the purpose of reducing pay or evading the application of these rules. It does not prohibit the discontinuance of a position because of reduction of force or of work, or in order to divide the work. And indeed it has been held many times that this may be done if the work is not taken from the craft entitled to it."

OPINION OF BOARD: On March 19, 1937 an Understanding was agreed to in connection with the consolidation at Detroit of Accounting Offices previously operated at Indianapolis, Cleveland, and Detroit.

Section 4 of the Understanding reads:—

“Present regular employes who, after the consolidations, will compose the forces at Detroit will thereafter be given continuous employment for a period of three years following the date of consolidation, at rates of pay not less than those then in effect. This guarantee will terminate in the event of resignations, deaths, retirement on pension on account of age or disability, or dismissal for justifiable cause.”

On July 25, 1939 a further Understanding was agreed upon with respect to permanent and temporary vacancies in the Detroit Accounting Office. It is provided therein that commencing July 1, 1937 the rules of the New York Central Agreement will apply where not in conflict with the Understanding.

Position No. 47 was abolished May 29, 1940, at which time it became vacant due to the death of the incumbent, and the duties, requiring 180½ hours of work, were distributed to other clerical employes in the same sub-department.

The Carrier claims its action was authorized by section 2-C of the 1939 Understanding which is as follows:—

“Where a position becomes vacant carrying a rate equal to or below the mean rate in the group in which the vacancy occurs, such vacant rate will be abolished if no longer needed.”

Position No. 47 was within the scope of said section 2-C.

We agree with the position of the Carrier.

After this position became vacant the work incident thereto was performed by other employes in the department without working overtime. It thus appears the position was unnecessary and, under the circumstances, the Carrier had the right to discontinue the position and divide the work among the other clerks. No agreement between the parties requires the Carrier to maintain an unnecessary position, that is, a position no longer needed.

The Organization contends that because 97% of the work of Position No. 47 remained at the time of the vacancy, the Carrier violated the agreement effective September 1, 1922 in discontinuing it, especially in view of sub-section F of the Understanding of 1939. Because of the provisions of section 2-C this contention cannot be sustained. Sub-section F reads:—

“These provisions (A-, B-, & C-, A- and B- relate to vacancies in positions not needed, and provide for the abolishment of the mean rate and the stepping up of employes to the higher rates) do not prohibit the permanent abolishing of any position on which 51% or more of the work has disappeared or been discontinued.”

We are not in accord with the proposition of the Organization that sub-sections F- and C- are dependent sub-sections, and construed together, mean that the Carrier can only abolish a position on which 51% or more of the work has disappeared and that a position can be considered “no longer needed,” and abolished, only under such situation. Under sub-section F a position, vacant or occupied, may be abolished if 51% of the work has disappeared. Under section C a vacant position may be abolished if no longer needed to perform its work, and this is true though more than 51% of the work belonging to the position remains. Neither sub-section requires negotiation between the parties.

Award 607, cited on behalf of the employes, does not control this case, as in said award the Board was construing provisions of the General Agreement in effect between the parties unmodified by a Special Understanding or Agreement.

We find no violation of Rule 43 of the General Agreement which provides that 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 rules.

The Organization complains the Carrier did not bulletin this vacant position as required by Rule 9 of the General Agreement. This was not necessary in view of the special agreement of 1939 and particularly section 2-C thereof.

Position 47 was properly abolished under section 2-C of the 1939 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 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, in view of the 1939 Memorandum of Understanding, did not violate the Agreement effective September 1, 1922.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March 1942.