

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that Carrier violated the rules of the Clerks' Agreement when on May 1, 1938, it abolished caller positions Nos. 571 and 573, Chanute, Kansas, hours of assignment 1:00 P. M. to 9:30 P. M. and 10:30 P. M. to 7:00 A. M., seven days per week, daily rate of pay \$4.41 and assigned the duties of those positions to positions carrying a lower rate of pay; and,

(2) Claim that concurrently with the abolishment of Positions Nos. 571 and 573, Carrier assigned routine clerical work formerly performed by the Roundhouse Clerks to employees not covered by the Clerks' Agreement in violation of the rules of said Agreement; and,

(3) Claim that Positions Nos. 571 and 573 shall now be established and all employees affected by their improper abolishment fully compensated to the extent they would have enjoyed such work had they not been deprived of it, retroactive to May 1, 1938.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 27, 1938, the following positions, all subject to the scope and operations of the Clerks' Agreement, were maintained in the Mechanical Department at Chanute, Kansas:

(Situating in Roundhouse Foreman's office)

TITLE	HOURS OF ASSIGNMENT	RATE
Roundhouse Clerk (No. 019)	12:01 AM to 8:00 AM 20" Meal Period	\$5.41
Roundhouse Clerk (No. 018)	8:00 AM to 4:00 PM 20" Meal Period	5.41
Roundhouse Clerk (No.)	4:00 PM to 12:01 AM 20" Meal Period	5.41
Engine Crew Caller (No. 571)	1:00 PM to 9:30 PM 30" Meal Period	4.41
Engine Crew Caller (No. 573)	10:30 PM to 7:00 AM 30" Meal Period	4.41
Janitor (No. 482)	8:00 AM to 4:30 PM 30" Meal Period	3.56

(Situating in the General Foreman's Office)

Chief Clerk (No. 07)	8:00 AM to 4:30 PM 30" Meal Period	6.85
Car Clerk (No. 391)	8:00 AM to 4:30 PM 30" Meal Period	5.67
Steno-Clerk (No. 011)	8:00 AM to 4:30 PM 30" Meal Period	5.76

Effective April 27, 1938, Position No. 018, Roundhouse Clerk, was abolished and Position No. 391, Car Clerk, was moved from the General Fore-

work was for some undetermined period in the past performed partly by the janitor, was assigned to the Steno-Clerk and Chief Clerk to General Foreman. The occasional carrying of messages and mail between Roundhouse Foreman's and General Foreman's offices by janitor when going from one building to another incidental to his cleaning duties was in effect before caller positions were abolished. The posting of bulletins by the janitor was so inconsequential that the time consumed could hardly be measured. None of these chores is "clerical work."

(2) There was no work transferred from abolished caller positions to employees not covered by Clerks' Agreement. The General Foreman and Night Roundhouse Foreman assumed none of the caller's duties and the store department truck driver's practice of handling mail which was of years' standing, was not changed or affected by the abolition of these positions.

(3) No basis exists for the Brotherhood's claim that the caller positions were improperly abolished. General requirements at the Chanute mechanical facilities had diminished to such an extent that there was no longer justification for maintaining the former clerical force and reductions therein were properly made.

OPINION OF THE BOARD: The question presented by this Docket is whether the Carrier in abolishing caller positions Nos. 571 and 573 properly assigned the duties remaining with such positions. Questions of fact only are presented.

Claimants first contend that prior to abolishing the two positions, which were Mechanical Department positions, these positions performed certain messenger service, which, after the positions were abolished, was performed by a Store Department employee. The facts disclose that a Store Department truck driver made regular trips to the Mechanical Department and on these trips carried Mechanical Department mail to the freight and passenger stations. No change in this practice was made with the abolishment of the positions, except that there was an attempt made to have all mail ready for the last daily trip of this truck driver. Any mail not ready was held until the following day. The practice of having mail delivered following the last trip of the truck was abolished when the positions were abolished. This amounted simply to an abolishment of work, which does not constitute a violation of the agreement.

Claimants next contend that certain work of the abolished positions was assigned to the janitor, a lower rated position, but which is a position subject to the clerk's agreement. It appears that, while the caller positions were in existence, they assisted the janitor to the extent of one hour a week with washing windows. After the positions were abolished the janitor washed the windows. We think it clear that this work is, by its very nature, janitor's work, and the record discloses that the callers performed such work only to fill in their time. With regard to other work of the abolished positions performed by the janitor, it appears that the janitor has performed some of such work, but the extent thereof and the present status of this work cannot be resolved from this record. Such work, however, is not extensive and not of such a nature, in any event, as to require the reestablishment of the abolished positions. This part of the claim, which the referee feels is of minor importance, is remanded to the parties for determination of the facts and disposition on the property.

We come now to the third contention of claimants, which they describe as the "gravamen of the whole controversy." This contention relates to the foremen and other employees not covered by the agreement performing work of the abolished positions. The burden is, of course, upon the claimants to establish the alleged violation. To sustain this burden claimants

have submitted in this record a long list of instances commencing with June 12, 1938, and extending to September 5, 1938, which purport to show that other than clerks were performing work formerly performed by the abolished positions. This list was never submitted to the carrier on the property although twice requested. Section 3 (i) of the Railway Labor Act provides that disputes "shall be handled in usual manner up to and including the chief operating officer." The rules of this Board provide, "all data submitted in support of employes' position must affirmatively show the same to have been presented to the carrier * * *." These alleged instances of violation were not made available to the carrier until claimants' submission to this division in March, 1942, at which time Foreman Johnson involved in most of the alleged instances of violation was in foreign service of the army. In view of these facts we give no weight to the alleged instances of violation. We do not believe, in the first place, that they are properly a part of this record, having never been submitted to the carrier on the property; and, secondly, even if properly a part of the record, the inexcusable delay in presenting these alleged instances to the carrier after requested, has deprived carrier of investigating or refuting them. We are of the opinion that this portion of the claim has not been handled according to the intent and spirit of the Railway Labor Act and the Rules of this Board. Without the support of these alleged instances, claimants have failed to sustain the burden of showing a violation.

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 dispute involved herein; and

That no violation of the agreement is shown with the exception of the work of the abolished positions being performed by the janitor, the extent of which cannot be determined from this record.

AWARD

Claim (1) sustained to the extent that it is determined on the property that the janitor is performing clerical work formerly performed by the abolished positions.

Claim (2) denied.

Claim (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1943.