

Award No. 4145

Docket No. CL-4061

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Report Clerk B. R. Davis, Chief Dispatcher's Office, Salt Lake City, shall be paid one day's pay at time and one-half rate for each Sunday, June 2 and 9, 1946, when he was not permitted to perform the work of his assigned position and employees from another class or craft were used to perform his work which is covered by the Clerks' Agreement;

(2) Report Clerk D. C. Keller, Chief Dispatcher's Office, Salt Lake City, shall be paid one day's pay at time and one-half rate for Sunday, March 16, 1947 and each subsequent Sunday that he has not been permitted to perform the work of his assigned position and employees from another class or craft have been used to perform his work which is covered by the Clerks' Agreement.

(3) Report Clerk B. R. Davis, Chief Dispatcher's Office, Salt Lake City, rate \$9.45 per day, shall be compensated for wage loss suffered for the period June 16, 1946 to August 15, 1946, inclusive, when his assigned position was abolished and the work was transferred to employees of another class or craft who were used to perform the work which is covered by the Clerks' Agreement; that other employees affected as a result of Davis exercising his seniority on the position of Clerk, Salt Lake City Telegraph Office, rate \$7.45 per day, shall be compensated for wage loss suffered for the period June 16, 1946 to August 15, 1946.

EMPLOYEES' STATEMENT OF FACTS: The position of Report Clerk in the Chief Dispatcher's Office at Salt Lake City is assigned six days per week, Sundays and contract holidays excluded. Prior to the origin of this dispute the employees assigned to this position under the Clerks' Agreement have regularly been required to work 8 hours on Sundays and holidays and have been paid time and one-half rate for such service as provided by Rule 41.

Report Clerk B. R. Davis was not permitted to work on Sunday, June 2 and 9, 1946 and Report Clerk D. C. Keller has not been permitted to work Sundays beginning March 16, 1947, and each subsequent Sunday thereafter. The work assigned to this position has been performed by the Chief Dispatcher, Assistant Chief Dispatchers, a Stenographer-Clerk and a small

He also handles a weekly material report and does some stenographic work for the Night Chief Dispatcher.

Reports, identical to the above, are made in each of the four other dispatchers offices on the railroad. Said reports are handled by the Chief and Assistant Chief dispatchers as clerical work incidental to their positions, no Report Clerks being employed in these four offices.

The Carrier holds the claims are without merit, without rules support, and should be declined.

OPINION OF BOARD: In 1942 the Carrier established a position of Night Car Distributor in the Chief Dispatcher's Office at Salt Lake City. The Car Distributor was expressly excepted from the provisions of the Clerks' Agreement and the position of Night Car Distributor was not bulletined to the Clerks on the theory that it was also excepted.

The ensuing dispute between the parties was settled on February 24, 1944, by the parties placing the position of Night Car Distributor under the Clerks' Agreement and changing the title thereof to "Report Clerk". This position under the new title was then bulletined as a position working seven days per week, Sundays and holidays excluded.

The clerks filling the position worked Sundays and holidays and were paid time and one-half rate therefor until June 1946. On the first two Sundays in June 1946, Clerk B. R. Davis, then filling the position, was not permitted to work and the work of the position was performed by the Chief Dispatcher, Assistant Chief Dispatchers, a Stenographer-Clerk and Trick Dispatchers.

The position was abolished by the Carrier during the period June 16, 1946 to August 15, 1946, and during that period the work thereof was performed by the Chief Dispatcher and other above named employees. When the position was reestablished it was again filled by Clerk Davis to September 5 and by Clerk D. C. Keller from September 6, 1946 to the present.

Claim (1) is for compensation for Clerk B. R. Davis for the two Sundays in June he was not permitted to work.

The work of this position and the position were by agreement of the parties placed within the scope of the Clerks' Agreement. It is admitted that the work of the position is approximately the same for each of the seven days of the week. When the parties placed the position under the scope of the Clerks' Agreement it was under the scope of that Agreement for seven days of the week and the work thereof could not be assigned to persons outside of the Agreement on the seventh day. See Awards Numbered 3360, 2469, 2549, 3491, 3858 and 3900.

Claim (2) is for compensation for Report Clerk D. C. Keller, who was regularly assigned to the position September 6, 1946, for Sundays beginning with March 16, 1947, on which days he was not permitted to work the position and the work thereof was assigned to and performed by said employees of another class or craft.

What we have said above as to Claim (1) applies equally as to Claim (2).

The position here in question was established by the Carrier and then by Agreement placed within the scope of the Clerks' Agreement. Admittedly, most, if not all, of the work of the position is clerical. After the position was placed under the Agreement by the action of both parties, it, of course, could not be taken out of the Scope of the Agreement by the unilateral action of the Carrier. Nor could such a result be accomplished by assigning the work of the position to other employees who were not covered by the Agreement.

Apparently this was what the Carrier attempted to do when it declared the position abolished June 16, 1946, and assigned the work of the position

from that date to August 15, 1946, when the position was reestablished, to employees not covered by the Agreement.

Neither in its statement of facts nor at any other point in the record does the Carrier give us any reason for abolishing the position for the two month period. It does not attempt to show any decrease in the work of the position in June when the position was abolished nor any increase in August when it was reestablished.

The Carrier seems to take the position that the work of the position was incidental to the positions of Chief Dispatcher and Assistant Chief Dispatchers and that, therefore, the Carrier could arbitrarily abolish the position at any time and assign the work to the Chief Dispatcher and Assistant Chief Dispatchers without regard to the agreement it had made to place the position within the scope of and subject to the rules and provisions of the Clerks' Agreement.

With this contention we cannot agree. In the first place, we cannot agree that the work of this position of Report Clerk is incidental to the positions of the Chief Dispatcher and Assistant Chief Dispatchers, represents an overflow of their duties which inherently belong to their positions and naturally flow back to and become a part of the duties of their positions in the event this position of Report Clerk is abolished. The record does not support that contention of the Carrier.

When this position was first established it was called Night Car Distributor. In a letter concerning the position, the Carrier stated, "The duties of Night Car Distributor are not different than those of Day Car Distributor."

In the statement of Carrier's Position it stated that the position "was established to assist the Day Car Distributor as well as the Assistant Chief Dispatchers." The record shows that the work of the Report Clerk was the same as that of the Night Car Distributor; that the only change in the position was in the name; and that the work of the position was clerical.

In Employees' Statement of Facts it was stated that during the period this position was abolished the work of the position was transferred to the Chief Dispatcher, Assistant Chief Dispatchers, a Stenographer-Clerk and to Trick Dispatchers. This statement was not denied by the Carrier.

Thus we see that the work of this position during the period the position was abolished did not revert to the positions of Day Car Distributor and Assistant Chief Dispatcher which according to the statement of the Carrier, were to be assisted by establishing this position.

Awards dealing with cases where a position has been established to assist another position and abolished when the need of assistance disappears are, therefore, not applicable to the factual situation with which we are here confronted.

Here the Carrier admits that its "traffic volume has remained heavy". It is also admitted that at no time had the work of the Report Clerk diminished to less than approximately seven hours per day.

Under the circumstances of this case the Carrier violated the Agreement by abolishing the position of Report Clerk and assigning the work thereof to persons not covered by the Clerks' 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 violated the Agreement as claimed.

AWARD

Claims (1), (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of October, 1948.