

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that position of Clerk at Trinity, Kentucky, which was nominally abolished November 1, 1943, be re-established, that Francis M. Moore, former incumbent, be returned to it, and that all employes who have suffered wage loss by reason of turning his work over to a person not covered by the Agreement be paid for any and all wage loss sustained.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 1, 1943, there was a Freight and Passenger Station at Trinity, Kentucky, which was located on the Kentucky side of the river and a Freight Office and Freight House at Manchester, Ohio, located on the Ohio side of the river. The Chesapeake and Ohio Railway Company operated ferry service between the two stations, a distance of approximately 1 mile.

Francis M. Moore, Clerk, was employed at the Trinity, Kentucky Freight and Passenger Station and performed all service at that point, being the only employe employed on the Kentucky side of the river, his position being fully covered by the terms of the Clerical Agreement.

Prior to November 1, 1943, there was employed at Manchester, Ohio, on the Ohio side of the river an Agent covered by the Telegraphers Agreement who performed all service at that point.

Effective November 1, 1943, the Carrier discontinued ferry service. The clerical position occupied by Francis M. Moore was nominally abolished. The Agent moved across the river from Manchester, Ohio, to Trinity, Kentucky, and was assigned the duties formerly performed by Clerk Moore.

There is in evidence an Agreement between the parties bearing effective date of January 1, 1945, and among others the following rules thereof read:

RULE 1—SCOPE

“(a) These rules shall govern the hours of service and working conditions of all of the following class of employes:

“Group 1—Clerical Workers: Employes who regularly devote not less than 4 hours per day to the compiling, writing, and/or calculating incident to keeping records and accounts, transcribing and writing letters, rendition of bills, reports, statements, handling

Award 3583—This award involves simply the interpretation of a rule which specifically provides that any work remaining when a clerical position is abolished will be turned over to other clerical positions if such positions exist. A ticket seller position was abolished and the work was turned over to the Ticket Agent instead of the remaining ticket sellers covered by the agreement. This in no way parallels the facts and questions involved in the situation at Trinity and, is, therefore, not applicable.

Award 3746—In that case the carrier installed a pneumatic tube system between several of its offices which did away with what is referred to as "leg work" of messengers who were Group 2 employes. As a result, the messenger positions were abolished and the remainder of their work (Group 2 work) was assigned to Group 1 employes. That situation is not similar to the one at Trinity, and is, therefore, inapplicable.

All of the above cases differ substantially in facts and principles involved. On the other hand, the Board has in its awards (notably Award 615) definitely ruled that in a situation such as that at Trinity the work belongs to employes under the Telegraphers' Agreement.

As already pointed out, the question of any adverse effect that the abandonment of the ferry service might have had upon employes was considered by the Commission in its order and no protest was made by the employes during the period from 1943 to 1947 before the Commission. This fact is significant in the consideration of this case.

The Carrier acted in good faith throughout and the employes have failed to show that any rule of the agreement has been violated. Accordingly, the claim should be denied.

OPINION OF BOARD: The village of Trinity, Kentucky, is situated across the Ohio River from Manchester, Ohio. The main line of the Carrier is located on the South Bank of the River and passes through Trinity. Prior to November 1, 1943, Carrier maintained a freight and passenger station at Trinity and a Freight Office and Freight house at Manchester side of the River, services were performed by an Agent and on the Trinity side by a Clerk. Effective November 1, 1943, the Carrier with the approval of the Interstate Commerce Commission discontinued the ferry service between the two points and abolished the clerical position at Trinity and the Agent moved across the River and thenceforth performed all the services for the Carrier at that point.

As Carrier states the facts, and this statement is not contradicted by the Employes, a Trinity originally an Agent under the Telegraphers' agreement was assigned and when conditions justified a clerk was added. Thereafter the agent moved his seat of operations to Manchester, for the most part, retaining jurisdiction over both places and supervising the work of the clerk on the Trinity side, all accounts being handled by the Agent and the Agent being responsible for all finances and other operations at both points. The employes minimize this latter statement of Carrier's by asserting that the only direction or supervision exercised by the Agent over the Trinity Station was that the reports covering the Trinity operation after being prepared by the Clerk and the funds taken in by him were sent to the Agent at Manchester and combined with his accounts there and that the Agent at Manchester did not come to visit or supervise the Trinity operation.

It is quite clear from the record that the services of both an Agent and a Clerk were not required at Trinity after the discontinuance of the ferry service. Hence, there is no doubt of the Carrier's good faith in not continuing the two positions. This, of course, is no defense to a claim, if the position which the Carrier considered surplus to its operation was discontinued or abolished in violation of an existing collective bargaining agreement.

The applicable Agreement recognizes that discretion with respect to the discontinuance or abolishment of positions rests with the Carrier. Such discretion must, however, be exercised in accordance with the Scope and Seniority Rules of the Agreement. Therefore, the only issue to be determined in arriving at a decision concerning the disposition of this claim is whether or not such rules have been violated.

The matter of assigning clerical work to Telegraphers has been before this Board in numerous cases. One of the earliest Awards, No. 615, stated that it has always been the rule that telegraphers may be assigned clerical work without limit except their capacity to fill out their time when not occupied with telegraphy. That broad rule has been limited, and rightfully so in our opinion, by succeeding awards of this Board. It was also stated in the aforementioned Award that there is a historically recognized limitation on the Clerks' Agreement for the performance of clerical work so far as Telegraphers are concerned, in that at one-man non-telegraph stations, the agent is expressly incorporated in the telegraphers' agreement. In the instant case, the present Agent at Trinity was incorporated in the Telegraphers' Agreement was so incorporated while the Clerk's position existed there.

When the ferry service was discontinued at Manchester and it was determined that only one position was required at Trinity, it appears to us that one of two courses of action were open to Carrier (1) It could continue the Agency at Trinity, moving the Agent over from Manchester as it did here, or (2) Abolish the Agency at Trinity and continue the clerical position at that place, placing the clerk under some other supervision. We do not believe that it is within the province of this Board to interfere with the Carrier's determination as to whether or not an Agent was necessary at Trinity. Having determined that an Agent was necessary at Trinity and that a one-man operation was all that was needed; within the limitation placed upon the Scope Rule of the Clerks' Agreement, indicated above, Carrier was within its rights in assigning the clerical work which remained to be performed at Trinity to the Agent.

Although we are not disposed to base our decision herein on the grounds of estoppel or laches within the meanings ascribed to said terms by previous decisions of this Board, we are inclined to the belief that the employes indicated concurrence in the action of the Carrier by their lack of diligence in attempting to protect the clerical position from abolishment or in filing a claim with reasonable promptness after its abolishment. It could not have been because of lack of notice because there were proceedings before the Interstate Commerce Commission before the Carrier was permitted to discontinue the ferry service and a representative of railway labor employes had requested the Commission to reserve jurisdiction to consider whether conditions should be imposed for the protection of employes as appears from the Commission's report of September 4, 1943. Such jurisdiction was retained for two years and again in 1945 was extended for another two years for the same purpose. So far as appears from the record, the earliest action taken by the employes in this matter was about April, 1945 when it protested to the Carrier and no action was taken by them in the Interstate Commerce Commission proceedings. Notice of intention of filing this claim was not given to the Carrier until June 28, 1948. We do not, of course, believe that there was a burden upon the employes to thresh out a claimed violation of their agreement before the Interstate Commerce Commission. But the factor of not protesting before that body coupled with the long delay in bringing the case before this Board does indicate to some extent that the employes took a dim view of their chances of ultimately establishing that the Carrier violated the Agreement and fortifies our view that a denial award is in order.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1949.