

Award No. 4932
Docket No. CL-4875

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees—

(1) That the Carrier violated and continues to violate the Clerks' Agreement of May 29, 1942 and as revised, effective May 14, 1948, when it abolished, effective February 27, 1947, the position of Machine Operator-Clerk, Freight Office, White River Junction, Vermont, occupied by Mrs. Florence A. Carver, and that,

(2) Machine Operator-Clerk, Mrs. Florence A. Carver shall be restored to her position which existed prior to February 27, 1947 and that she shall be compensated for all wage loss sustained by her at the regular rate of her position of \$7.64 per day (plus any subsequent general wage increases applicable to said position) less the amount of such earnings as may have accrued to her subsequent to February 27, 1947.

EMPLOYEES' STATEMENT OF FACTS: February 21, 1947 notice was served upon Mrs. Florence A. Carver by Freight Agent E. P. Martel that effective February 27, 1947 her position as Machine Operator-Clerk, rate \$7.64 per day, would be abolished. The position is one within the Scope of the Agreement between the Carrier and the System Committee of the Brotherhood, effective May 29, 1942 as revised, effective May 14, 1948. Subsequent to the abolishment of this position, a part of the duties were assigned and thereafter performed by Freight Agent E. P. Martel, as follows:

Drawing Freight Bills, 1 hour per day
Preparing tonnage payroll, 1 hour per day
Answering correspondence claims and tracers, 2 hours per day
Preparing reports such as carload forwarding reports and carloads received and cost reports, ½ hour per day,

or a total of 4½ hours. The other 3½ hours of work was assigned to the remaining clerks in the Freight Office at White River Junction, Vermont.

POSITION OF EMPLOYEES: There is in effect an Agreement between the parties effective May 29, 1942 as revised effective May 14, 1948. The following rules and provisions of the said Agreement effective May 29, 1942 are applicable in this claim as hereinafter set forth:

haps from the inception of the industry—certainly since the beginning of the Telegraphers' Agreement, telegraphers have been required and have had the right to perform clerical duties". And again, "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. For obvious reasons, in diminution of forces, a clerk cannot take or be accorded telegrapher's duties but the converse is not true; on the contrary, where two positions are involved, one, that of a clerk and the other, that of a telegrapher, and one is to be abolished, the telegrapher—if any telegraphy duties remain—has the absolute right to the position including the assumption of the remaining clerical duties". (Emphasis added by Carrier).

This last quotation should settle the instant claim. There was a larger force than needed at White River Jct., Vt.; there were telegraphic duties to be performed; a position was to be abolished. As between abolishing a clerk's position or a telegrapher's position, the telegrapher had the absolute right to stay on the job even though it involved clerical duties.

Award 615 is not an isolated decision; it is a well-reasoned discussion of the whole subject of over-lapping duties of telegraphers and clerks, and has been followed with approval in many subsequent Awards. Of course, there are plenty of Awards where the claims have been allowed, but they all involved cases where the work of the abolished position was subsequently performed by employes who had no right to perform that work. Here on the contrary, the work of the abolished position was subsequently performed either by clerks, as to whom no question has been raised, or by a telegrapher, one of a class whose duties have always included clerical work.

It is true that since Award No. 615 there have been some affirmative awards, but each of these was based on the facts of the particular claim involved and none of them pretended to overrule Award No. 615. On the contrary in every case the opinion recognized and accepted the rule in Award No. 615 that where the work of the abolished position that is absorbed by an agent-operator is identical to the agent-operator's work, the agent has the right to the position and to the work. The work which was taken over by the agent at White River Jct. was wholly incidental to the agency work; a telegrapher had to be retained at that point; there was not enough work to justify the continued employment of a clerk; the lowest rated position was abolished; there was no violation of any rule in the Clerk's Agreement.

OPINION OF BOARD: The Claimant was employed by the Carrier as a Machine Operator Clerk at the Freight Office, White River Junction, Vermont. On February 27, 1947 her position was abolished and her duties assigned to other Clerks and the Agent, an employe outside of the Scope of the effective Agreement.

The Employes claim that the Carrier violated Rules 1, 2 (a), 3 (b), 28 (a) and 39 (b).

The Employes state that four and one-half ($4\frac{1}{2}$) hours of the Claimant's work was assigned after February 27, 1947, to the Agent, and three and one-half ($3\frac{1}{2}$) hours to the other Clerks. That eight hours of work was transferred has not been denied by the Carrier.

Award 607 stated: "There is no authority whatever under the Agreement itself for the discontinuance of a position having full eight hours of duties and reassignment of such duties to others. Such a practice would completely nullify the Wage Agreements." This Award has been reaffirmed by many other Awards of this Board.

The Carrier relies on Award 615 of this Board; however, Awards 607, 636, 637 by the same referee, shows how he distinguishes a claim such as the one before us now, from the claim made in Docket CL-550 which was decided by Award 615.

Due to the fact that the Carrier violated the Scope of the Agreement in abolishing a position where there remained eight hours of duties, by giving a substantial amount of the duties to an employe outside the Scope of the Agreement, the other rules cited by the Employes as being violated will not be considered or commented upon.

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 violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Date at Chicago, Illinois, this 20th day of July, 1950.