

Award No. 7081
Docket No. CL-7008

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated and continued to violate the rules of the Clerks' Agreement at Indianapolis, when

1. Beginning with January 1, 1952, it permitted employees in the Car Department not covered by the Clerks' Agreement to perform the class of work on Saturdays, Sundays, and holidays that is performed by Claimant H. M. Perry on Monday through Friday on his regular assignment of Material Distributor, and

2. That Carrier shall by appropriate order compensate H. M. Perry, Material Distributor, for eight (8) hours each Saturday, Sunday and holiday at the time and one-half rate from January 1, 1952 until such time as this work is restored to the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: At Indianapolis, Indiana, there is located a roundhouse in which locomotives are repaired and put into condition. The operation of the Roundhouse is manned by various Supervisors and employees not covered by the Clerks' Agreement. The oil and parts necessary in this repair work are purchased by the Stores Department which is supervised by a Storekeeper who is not covered by the Clerks' Agreement.

Henry N. Perry is employed at this location and is covered by all the Rules of the Clerks' Agreement. He occupies a Group 3 position designated as Material Distributor. The duties of the position from Monday to Friday consist of issuing of supplies at the oil house. On Monday through Friday employees from the Mechanical Department, who are not covered by the Clerks' Agreement, present a form, designated as Form 2311, to Material Distributor Perry who issues the supplies designated on the Form 2311 to the Mechanical or shop employee who presents same.

On Saturdays, Sundays and holidays Material Distributor Perry is not permitted to work. On these days the keys to the oil house and storehouse are turned over to the Mechanical Department for the purpose of affording any employee thereof entrance to the oil house or storehouse to obtain needed material and supplies.

Appended hereto is a list showing value of materials taken from the Storehouse at Indianapolis on Saturdays, Sundays and holidays for the period January 1, 1952 to September 7, 1952.

"We find nothing in conflict with the rules insofar as the procuring and handling of supplies by the using department is concerned in the instant case. Clerks do not have exclusive right to this work and where incidental and necessary to the work of others, it is permissible practice for the latter to act once custody is transferred.

"We have repeatedly held that a Carrier has an absolute right to abolish any position provided the duties of the position are in fact abolished. (Award 255). However, if the duties are not abolished, the transfer of such duties or work to an employee on another seniority district can only be done after agreement. (Awards 1808, 4076, 4653, 5375). The Carrier does not controvert the showing made by the Organization that the roundhouse clerk upon another seniority district performed a portion of the duties formerly performed by the storekeeper except to say that the Scope Rule in effect upon this property refers to 'positions' and not to 'work', hence does not prohibit the action taken. We have rejected this contention in numerous Awards holding that work is a component part of a position. See particularly Award 1314.

"It may be possible for the Carrier to redistribute the work of the abolished position so as to avoid breach of the Agreement. It should at least have opportunity to do so, hence we are not inclined to order the re-establishment of the position as requested by the Organization."

In its Findings this Division held in part: "the agreement is not violated by work performed by Motive Power and Car Department employees, * * *."

The Carrier directs particular attention to that portion of the "OPINION OF BOARD" in this Award which reads:

"We find nothing in conflict with the rules insofar as the procuring and handling of supplies by the using department is concerned in the instant case. Clerks do not have exclusive right to this work and where incidental and necessary to the work of others, it is permissible practice for the latter to act once custody is transferred."

In all, the Carrier asserts that based on established past practice on this property and based on the holdings of this Division, the conclusion necessarily and logically pursues that procuring material from storehouses is by no means work belonging exclusively or solely to employees under the Clerks' Agreement.

This claim is without merit and should be denied.

(Exhibits not reproduced)

OPINION OF BOARD: It appears that on Saturdays, Sundays and holidays subsequent to January 1, 1952 Mechanical Department employees helped themselves to oil and parts needed in their repair work but it does not appear that anyone performed the functions or duties of the Material Distributor on those days, so the claim is without merit.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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

The agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.