

Award No. 7246
Docket No. CL-7011

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

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

(a) The Carrier violated the Clerks' Agreement, when on September 19, 1949, they discontinued the position of 280 Night Report Clerk, rate \$260.17, at Cedar Rapids, Iowa, and assigned certain clerical work from that position to the Night Chief Dispatcher, a position not covered by the Clerks' Agreement.

(b) The normal duties attached to the 280 Night Report Clerk position be restored to clerical workers and claimant, Gordon Oswald, and others affected by Oswald exercising his seniority be allowed wage loss sustained, retroactive to September 19, 1949, representing the difference between what they earned on positions due to the exercising of seniority rights as a result of the discontinuance of the 280 Night Report Clerk position, and what they would have earned had the 280 Night Report Clerk position not been abolished.

Note: Actual monetary consideration involved in this claim to be determined by joint check of payroll records, etc.

EMPLOYEES' STATEMENT OF FACTS: Clerical Agreement dated August 2, 1945, page No. 9, under Rule 1, Scope, lists "Night Report or 280 Clerks" as covered by the Clerks' Agreement.

Prior to September 19, 1949, the 280-Night Report Clerk was assigned seven (7) days per week, 11:00 P. M. to 3:00 A. M., and 3:30 A. M. to 7:30 A. M., rate of pay \$260.17 per month.

September 12, 1949, the following notice was served on the Night Report Clerk and Division Chairman:

"Mr. Gordon Oswald
Night Report Clerk
Cedar Rapids, Iowa

"This letter is notification of abolishment of your position after completing your tour of duty the night of September 18, 1949,

and until due notice is given United as required by statute. Nor does the court intend to award damages or attorney's fees to United; no basis for such an award has been found by the court or suggested by counsel.

DECREE

It is therefore hereby adjudged, ordered, and decreed that United is involved in a dispute submitted by the Brotherhood to the Fourth Division of the NRAB, which dispute has been assigned Docket Number 926, and that United is therefore entitled to due notice of said dispute, as provided in Section 3 First (j) of the Railway Labor Act. Accordingly, R. A. Walton, W. J. Ryan, V. W. Smith, Leo B. Fee, Howard K. Hagerman, and Paul C. Carter, members of the Fourth Division, and R. B. Parkhurst, Secretary, are hereby enjoined from proceeding to hear said dispute unless and until due notice is given United as provided in Section 3 First (j) of the Railway Labor Act.

/s/ Wm. J. Campbell

January 6, 1954" (Emphasis added).

In summation, it is clear that you have before you a dispute that finds the Carrier free of any violation of the Agreement as to the method used in abolishment of the affected position; to the contrary, all was in accord with the provision of that agreement. Also apparent is the fact that the abolishment of the position was justifiable in the terms of efficient and economical operating procedures, which management of the Carrier is charged with progressing. Of fact, too, is the Carrier's proposition, as proved by the contents of this brief, that your Board may not in good faith grant a single request made upon you by the Organization in their "Statement of Claim". Finally, because of the interest of the American Train Dispatchers' Association in the disposition of this dispute, we believe you are obliged to extend to them the opportunity to be heard in defense of their asserted rights.

Therefore, in consonance with all of the foregoing, we respectfully petition that you, in your final disposition of this dispute, announce a denial Award.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's Representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The Organization contends, in brief, that as the Scope Rule 1 of the applicable Agreement lists Night Report or 280 Clerks (Section 1, Group 1), the Carrier violated the Agreement when on September 19, 1949, the Trainmaster notified the incumbent of the Night Report Clerk position that the position was abolished as of that date. Also, the Carrier in the distribution of remaining work gave 3 hours and 20 minutes to the Night Chief Dispatcher, an employe of another craft not under the Clerks' Agreement.

That the work involved has been under the Clerks' Agreement since March 26, 1930, when a Night Report Clerk position was established under the terms of the Agreement between the parties dated August 1, 1922, and the position and work was still maintained when the revised Agreement became effective January 1, 1931. That even during the period from December 16, 1931 through November 14, 1936, while the Night Report Clerk position was non-existent as such, the work thereof was assigned and performed by another clerical position, that of Car Distributor, embraced within the Clerks' Agreement. And on November 15, 1936, the position was re-established and maintained thereafter until abolished in September, 1949. That during the

latter period the Agreement was again revised and the applicable Agreement became effective August 2, 1945.

Therefore, that the record shows the involved work was performed by clerical employes for nearly 20 years, and thus became work traditionally performed by Clerks. Several awards are cited in support of the contentions made. It is also alleged that seniority rights of clerical employes were ignored.

Respondent Carrier contends the involved work was formerly performed by the train dispatching craft to which it is incidental to the work of train dispatching and from which it originally flowed and is directly related thereto. Also, the fact the work happens to be of a clerical nature does not destroy its identity as such related work. It is further contended the position of Night Chief Dispatcher was properly established and there is no reason that all of these related duties cannot be performed by the occupant of such position when necessary to do so. That this situation, that is, Clerks doing this work, occurred when the making of reports became too burdensome by reason of increased business in the Dispatcher's work and when the dispatching forces again became able to perform the work, it was reassigned to them. That in such a situation premised on facts as here shown, the "ebb and flow" principle applies, citing awards of this Division in like situations, and that petitioners have not shown the work in question as being exclusively that of Clerks. Also cited is Award 4559 in a dispute involving these same parties and the same Agreement in which this Division refused to hold that the inclusion of Ticket (Clerks) in the Scope Rule prohibited the Carrier from abolishing such positions and assigning the remaining work to positions to which ticket selling was incidental.

We are of the opinion this record shows the work involved was originally performed by employes of the train dispatching craft and the "ebb and flow" principle which has been the basis of numerous awards of this Division applies here. Also that the inclusion of this work in the Scope Rule does not have the broad application as here contended by petitioner in a situation where the work was originally performed by another craft as an incident to the work of such force and in the present case it cannot be said the involved work is exclusively that of Clerks.

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

The Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1956.