

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

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

(a) Carrier violated and continues to violate the parties' agreement effective January 1, 1938, when on August 5, 1953 it abolished Clerk Position No. 2, at Stuart, and transferred duties of that position to the Agent and to incumbent of Ticket Clerk-Operator Position No. 4074, established on November 24, 1953, and that

(b) Carrier shall compensate Clerk C. H. Strauss and all other employees who may have been or who may be affected by the abolition of Clerk Position No. 2, at Stuart, for all wage losses resulting from abolition of this position on August 3, 1953, and the transfer of the work of that position to employees of another craft and class of employees.

See Award 7975 for Statement of Facts and Positions of the Parties.

OPINION OF BOARD: The instant dispute is again before the Board after notice given pursuant to Section 3, First (j) Railway Labor Act, as Amended, in conformity with Award 7975.

Notice of hearing, the service, and the return made thereon, all have been examined and same are hereby approved. Accordingly, the Board is of the opinion, on the basis of its first determination in Award 7975, that all interested parties to the dispute have been given the notice contemplated by Section 3, First (j), supra; that the dispute is at issue for a final and binding award. Thus, the dispute, being now at issue, comes on for decision on the merits.

The dispute arises at Stuart, Florida, a point on Carrier's double track, automatically signaled mainline between Jacksonville and Miami, Florida.

Stuart is basically a one man agency station. Over the years, other positions have been established and abolished to accommodate the needs of the service and the scope of the work under both the Clerks' and Telegraphers' Agreements.

As shown by the record, the need predominantly has been one for relieving or assisting the agent with his clerical duties when the volume of business could not be accommodated at a one man agency station. Except for a 2½ month period in 1945 a clerical position had been established and remained in existence for 10½ years prior to August 5, 1953, when the position was abolished, after protest and dispute over ticket selling work assigned to the clerical position by the Agent.

Shortly after the clerical position was abolished, and on November 4, 1953, Carrier advertised a position of "Ticket Clerk-Operator" at the same location for "Agents and Operators" of the Telegraphers' craft, involving substantially the same duties as those previously assigned and performed on the abolished clerical position, but adding the additional clerical work of selling tickets, along with added telegrapher duties in the nature of "telegraphic and train order work."

The bulletin of November 4, which advertised the hours of the position so as to coincide with the assigned hours of the Agent, was cancelled on November 7, and a replacement bulletin was posted November 16, 1953, advertising the same "Ticket Clerk-Operator" position, but changing the hours of assignment from 9:00 A. M.-5:00 P. M., to 1:00 P. M.-9:00 P. M. The position was filled on November 24, 1953, and later abolished on April 23, 1954.

The change in hours, according to Carrier, was due to the requirement to "OS" trains and handle train orders after the Agent went off duty. There is evidence of record that some such work was performed on all but Saturdays, Sundays, and holidays, days on which the "Ticket Clerk-Operator" did not work. On dates checked for a sampling of the work no telegrams were sent nor were train orders copied, according to an exhibit appearing in the record.

Rule 66 of the Clerks' Agreement is relied upon in support of the claimed violation. That Rule reads:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

The evidence of record is sufficient to make out a case of evasion within the meaning of the rule.

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 all interested parties to the dispute were duly notified of the pendency of the dispute, and were afforded the opportunity to appear before the Board and to be heard before a final and binding award was entered herein, all as per our earlier Award No. 7975.

That the Clerks' Agreement was violated when Carrier abolished Clerk Position No. 2, at Stuart, and transferred duties of that position to incumbent of Ticket Clerk-Operator Position No. 4074, established November 24, 1953.

That the named claimant should be compensated for wages lost from his established position from November 24, 1953, to April 23, 1954, but claim made on behalf of unnamed employees is denied.

AWARD

Claims (a) and (b) sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November, 1957.

DISSENT TO AWARD 8124, DOCKET CL-7486

The majority correctly denied the claim made herein on behalf of unnamed employees.

However, it erred by invoking Rule 66 to sustain part of the remainder of the claim herein based upon the following erroneous premise contained in its FINDINGS:

"That the Clerks' Agreement was violated when Carrier abolished Clerk Position No. 2, at Stuart, and transferred duties of that position to incumbent of Ticket Clerk-Operator Position No. 4074, established November 24, 1953."

In the OPINION OF BOARD herein, the majority correctly states that Clerk Position No. 2 was abolished on August 5, 1953. The remaining work thereof was transferred back to the Agent who was the only employee remaining at Stuart. Ticket Clerk-Operator Position No. 4070 was not in existence at the time. Consequently, Rule 66 was not applicable. This is confirmed by the majority's eliminating the period August 5 to November 23, 1953, inclusive, from that part of the claim sustained herein.

In addition, this Award is in conflict with an important principle which has been followed consistently by this Division down through the years and which recognizes the right of telegraphers to perform clerical work.

For the above reasons, Award 8124 is in error and we dissent.

/s/ W. H. Castle
/s/ J. F. Mullen
/s/ R. M. Butler
/s/ C. P. Dugan
/s/ J. E. Kemp