

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, Referee

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

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

1. That the Carrier violated the rules of the current clerks' Agreement, effective January 1, 1953, when on May 7, 1953, it abolished the position of Clerk-Stenographer in the Wilmington, N. C. Agency and transferred the work to the Agent, an employee not covered by the Agreement.

2. That the work be returned to the scope of the Agreement and the position be reestablished and assigned to the last former incumbent.

3. That Claimant A. R. Turner be compensated for all wage loss sustained as a result of the abolishment of his position and improper transfer of the work.

EMPLOYEES' STATEMENT OF FACTS: On May 1, 1953 notice was posted at Wilmington, N. C., advising employees concerned of the abolishment of Clerk-Stenographer position, rate \$13.11 per day, effective with termination of assignment on May 7, 1953. This was the only clerical position on the Wilmington, N. C. Group 1 roster and it had been in effect from 3-8-24 until discontinued 5-31-32; was again established 4-1-40 and continued in effect up to date of abolishment on May 7, 1953, as a result of which Claimant A. R. Turner was furloughed.

In letter of May 21, 1953 to Mr. H. R. Lary, Supervisor, Labor Relations, the Organization protested the action taken by the Carrier and filed formal claim. On June 10, 1953 the Supervisor, Labor Relations acknowledged receipt of claim and set date for hearing which was held on June 17, 1953, at which time Carrier introduced report of its representative, dated May 15, 1953, covering survey made at Wilmington. Claim was denied by the Supervisor, Labor Relations in his letter of July 17, 1953. The case was then appealed to and subsequently denied by the highest officer to whom appeals

was in harmony with the ebb and flow principle as it has been applied numerous times by the railroads in similar situations. Also, the Company has shown that the history of the work in question establishes that it was indigenuous to the Agent's position who performed it himself during periods of low-volume business or performed it assisted by a clerk-stenographer during periods of high-volume business.

Further, the Company has shown that it tried to handle this matter in an orderly way with the Organization by negotiating inclusion in a small points Memorandum Agreement. In the face of the obvious fact that there was not sufficient work at Wilmington to justify the retention of the clerk-stenographer position, the Organization steadfastly refused to negotiate the matter. As evidence of the Organization's error in this respect, the Company has shown that subsequent to the instance in question the Organization has negotiated Phoenix, Arizona, into the list of small points covered by the Memorandum Agreement, dated December 2, 1952. Finally, the Company has shown that awards of the National Railroad Adjustment Board clearly set forth the correctness of the principle under which Management proceeded in this case.

In view of the fact that the Organization has been unable to show any violation of the rules Agreement in the matter complained of, there can have been no wage loss incurred by any clerical employee. Therefore, its claim is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employee or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier has maintained an Agency in charge of an Agent at Wilmington, North Carolina, since April 1, 1907. At various times assistance was needed and other positions created while the need existed. The last of such situations occurred with the advent of the Korean situation and a Clerk-Stenographer position was established on September 11, 1950, and because of a decrease in work was discontinued on May 7, 1953. During that interval on the 2nd day of December, 1952, the Company became a signator to an agreement with the Clerks' Organization which became effective on January 1, 1953 and which, among other provisions contained the following:

"Rule 1. Scope. These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees. Positions or work coming within the scope of this Agreement belongs to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of positions or work from the application of these rules, nor shall any officer or employee not covered by this Agreement be permitted to perform any clerical, office, station or storehouse work which is not incident to his regular duties, except by agreement between the parties signatory hereto."

"Rule 2. Definition of Clerk. (a) Employees who regularly devote not less than 4 hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters,

rendition of bills, reports and statements, handling of correspondence and similar work, and to the operation of photostat, typewriters, adding and calculating machines, bookkeeping, accounting, key punch, timekeeping, and statistical machines, dictaphones, teletype and all other similar equipment or devices used in the performance of clerical work or in lieu of clerical work shall be known as clerks." * * *

A Memorandum Agreement was also entered into on the 2nd day of December, 1952, that will be referred to as the "Small Points" Agreement. That memorandum of agreement reads:

**"MEMORANDUM AGREEMENT
"CONCERNING THE PERFORMANCE OF WORK
AT SMALL POINTS**

"It is hereby understood and agreed by and between The Pullman Company and its clerical, office, station and storehouse employees, represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that employees not covered by the working Agreement, effective January 1, 1953, who perform a certain amount of work of the craft or class of clerical, office, station and storehouse employees in connection with their regular duties at the points listed herein where no Group 1 or Group 2 positions exist will be permitted to continue to perform such work for so long as the present conditions exist.

Location	Position
Atlantic City, N. J.	Agent-Foreman
Banff, Alta.	Seasonal Agent
Billings, Mont.	" "
Cedar City, Utah	" "
Colorado Springs, Colo.	" "
Galveston, Texas	Agent-Foreman
Glacier Park, Mont.	Seasonal Agent
Grand Canyon, Ariz.	" "
Laredo, Texas	Agent
Portland, Me.	Seasonal Agent
Roanoke, Va.	Agent-Foreman
Toledo, Ohio	" "
Vancouver, B. C.	Seasonal Agent
West Yellowstone, Mont.	" "

"It is further understood and agreed that in the event of an increase in the work of the craft or class of clerical, office, station and storehouse employees at any of the above-listed points to the extent that such work will constitute a position (4 hours or more per day), the necessary position or positions will then be established in accordance with the provisions of the working Agreement.

"Signed at Chicago, Illinois, this 2nd day of December, 1952.

FOR THE PULLMAN
COMPANY:
/s/ H. R. LARY
Supervisor, Labor Relations

FOR THE EMPLOYEES:
/s/ W. J. HINCKS
General Chairman, Brotherhood of
Railway and Steamship Clerks,
Freight Handlers, Express and
Station Employees"

On February 27, 1953 the parties entered into another Memorandum of Agreement which related to the 40-hour week understanding. That agreement reads in part:

"CONCERNING REORGANIZATION OF FORCES IN DISTRICTS, AGENCIES AND REPAIR SHOPS TO CONFORM TO PROVISIONS OF THE WORKING AGREEMENT, EFFECTIVE JANUARY 1, 1953, COVERING PULLMAN CLERICAL, OFFICE, STATION AND STOREHOUSE EMPLOYEES.

"Whereas the parties recognize that the original rearrangement of forces in districts, agencies and repair shops to conform with the provisions of the new Agreement, effective January 1, 1953, entails a large number of changes in positions, such as re-assignment of duties from one position to another, changes in rest days and changes in starting times of shifts;

"IT IS THEREFORE AGREED * * *

" * * *

"It is further understood that assignments to positions as outlined above will be confined solely to the original reorganization of districts, agencies and repair shops. After such reorganization has been completed, subsequent changes in forces will be handled in the regular manner prescribed in the applicable rules of the working Agreement."

We must note here that the position of Clerk-Stenographer was an active position on the date of the signing of the main agreement, the Memorandum of Agreement of December 2, 1952, the date the main agreement became effective, namely, January 1, 1953 and the date of the February 27, 1953 Memorandum.

After an investigation by the Carrier revealed that the clerk had only 90 minutes of work per day, the position was abolished on May 7, 1953 and the work which the Clerk was performing was transferred to the Agent. Grievance was filed by the Organization and a hearing held on the grievance on June 17, 1953. Part of the transcript of the hearing reports the following statement by Carrier representatives:

" * * * Management was unaware of the true situation in Wilmington at the time the Memorandum Agreement of December 2, 1952 concerning performance of work at small points was negotiated, and for that reason neglected to request that Wilmington be included in the list of small points.

"It is also a fact that our Agreement with the Organization was that when the new Clerks Agreement, effective January 1, 1953, was placed in effect on Pullman property an effort would be made to reorganize the clerical forces and reassign duties to clerical positions. This requirement produced the information that there was not sufficient clerical work at Wilmington to justify a clerical position, which position is defined in Rule 2 of the Clerks Agreement as follows:

(Rule 2 quoted) * * *

"Management would have been remiss in its responsibility to the Organization and itself under the terms of the new Agreement if it

had ignored the fact that there was no clerical position logically to be established in Wilmington. It is certainly not contemplated by the parties in the negotiation of the Clerks Agreement that any remnant of clerical work arising at a point in itself justifies the establishment of a clerk's position. Management desired under the reorganization at Wilmington to abolish the clerk's position which had been let stand in Wilmington in error and for that reason desired to reopen the small points Memorandum Agreement for the inclusion of Wilmington among the points listed therein.

"Management has felt that the Organization cannot arbitrarily refuse to reconsider a question which is of vital concern to the efficient operation of The Pullman Company, which responsibility is jointly borne by the Organization and Pullman Management alike when it pertains to the establishment or abolishment of clerical positions. In an effort to persuade the Organization that it ought to give favorable consideration to including Wilmington among the small points, a careful analysis was made of the clerical work to be performed in Wilmington * * * ."

Many awards of this Board hold to the principle that the integrity of agreements in writing requires that they be enforced in accordance with the expressed meaning when that can be determined from the agreement itself. It must be conclusively presumed that all contentions and understandings of the parties either in agreement or disagreement have been merged into the agreement as negotiated, written and executed by the parties. Where the language is clear and unambiguous the terms of the agreement must be enforced as expressed by the parties.

If the Carrier had abolished the position of clerk in its entirety no violation could have been presented. But in this case 90 minutes of work per day was transferred to the Agent, who, of course, had been performing that work at the time the Clerk position was created.

The Board has ruled so often that Scope provisions such as the one negotiated herein have abrogated the doctrine of "Ebb and Flow" that the rulings are apparently absolute. Award 3003 among many others holds that the Carrier clearly had the right to reduce its forces by abolishing positions provided it did so in accordance with the provisions of the controlling agreement. Award 3563 along with many others since that time had for review the same scope provision as in the instant case that "no position shall be removed from this agreement except by agreement," and the holding of the Board was that a violation of the contract occurred when duties under the agreement were assigned out of the agreement. (Awards 6141, 6357, 6444, 7047, 7048, 7129, 7168, 7372, 8079, 8234, 8236, 8289, 8330).

The Board is of the opinion that the Small Points Memorandum cannot be of any assistance in this matter because the small points are specifically named therein and Wilmington, North Carolina, is not included. This memorandum further provides that a Clerk's position will be established in the event that work covered by the Clerks' Agreement which the Agent was performing exceeded four hours pay day. The Board holds that this provision applies to the creation of Clerk's position and cannot be used as a basis for the abolishment of the position when any work remains which must be transferred to employees outside the Clerks' Agreement.

The Board is of the opinion that the Memorandum of February 27, 1953 is one covering the adjustment of positions between employees covered by the Clerks' Agreement and in no way refers to transferring work outside of the positions so covered.

The Carrier requested that the Organization negotiate this matter and include Wilmington, N.C., into the Small Points Agreement. The Organization refused such negotiations. Recently, however, upon request and by negotiation, Phoenix, Arizona, was added to the Small Points Agreement. Two hours of work per day were involved in that negotiation. Here there was some dispute as to the amount of work involved but the Carrier contends that only 90 minutes per day was involved.

The refusal of the Organization to negotiate this matter after request was not proper. The request was made before the date of May 7, 1953, the date upon which the position was abolished. The Board is of the opinion that the refusal of the Organization to negotiate shall not be used as a basis for an abrogation of the express terms of the agreement entered into by the parties but the action of the Organization shall preclude the payment of money as requested in part (3) of the Statement of Claim.

We find a violation of the Agreement in claims (a) and (b) but for reasons herein expressed make no allowance as requested in (c).

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 Employee involved in this dispute are respectively Carrier and Employee 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 in the matter of Claims (a) and (b) and no money award will be made in (c) in accordance with this Opinion.

AWARD

Claim (a) allowed.

Claim (b) allowed.

Claim (c) disallowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1958.

**SPECIAL CONCURRING OPINION TO AWARD NO. 8382,
DOCKET NO. CL-8199**

The undersigned Carrier Members concur in Award 8382 to the extent that it disallowed Claim (c) because of the Organization's refusal to negotiate this matter after it was requested to do so by the Carrier. However, we do not concur in the holding therein that the Agreement was violated.

/s/ W. H. Castle

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp