Award No. 8665
Docket No. CL-8087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

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

(a) That the Carrier violated the terms of the Clerks' Agreement when effective March 31, 1954, it nominally abolished position of Rate and Bill Clerk No. A-42-8 located at Fostoria, Ohio, Freight Station, and thereafter performed the duties by assigning them to Cashier position A-32-5 and Freight and Ticket Clerk position A-33-7, and

(b) That it further violated the Clerks' Agreement when effective April 2, 1954, it required and permitted the Freight Agent to perform duties of the abolished position, and

(c) That the incumbent of Rate and Bill Clerk position A-42-8 and others affected thereby be paid for wage loss sustained during period position was nominally abolished, and

(d) That the incumbent of Cashier position A-32-5 and the incumbent of Freight and Ticket Clerk position A-33-7 be paid at the rate of time and one-half times their daily rate account of work assigned the positions being performed by the Freight Agent and to the extent of the time so devoted, and

(e) That the position No. A-42-8 be re-established as provided by the rules of the Agreement.

EMPLOYES' STATEMENT OF FACTS: Following mediation proceedings on December 13 and 14, 1949, an Agreement was reached between the Chesapeake and Ohio and Nickel Plate Railroad Managements, and the General Chairmen, representing the clerical employes on the two properties, discontinuing the existing joint operation at Fostoria, Ohio, effective January 1, 1950, copy of which is hereto attached, designated Employes' Exhibit "A", and by reference made a part hereof.

CONCLUSIONS

The Carrier has shown by abundant evidence that it has been the practice down through the development of the railroad industry for Agents to perform necessary station work just as such work is being performed by the Agent-Operator at Fostoria, Ohio, under present conditions, and that there has been no violation of the Clerks' Agreement in any respect. The Board should, therefore, deny the claim in the instant case in its entirety.

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All data contained in this submission have been discussed in conference or by correspondence with the Employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket, like Docket CL-8086, was previously before the Division. Award No. 8023 was made on July 25, 1957, with the present Referee sitting as a member of the Division. This award deferred decision on the merits of the claim pending notice to the Order of Railroad Telegraphers as an "involved" party. Subsequent to the issuance of Award No. 8023, notice was duly given, and the claim now comes before the Division for decision on the merits.

This claim is very similar to the one involved in Docket CL-8086 on which Award 8664 was made this day. Both claims arose at Fostoria, Ohio, and while the facts differ, the rules involved are the same. The controversy here involved resulted from the Carrier's action on or about March 31, 1954, when it abolished a Rate and Bill Clerk position (A-42-8) at Fostoria, Ohio. Petitioner contends that the position was not actually abolished. It may be noted that the Carrier re-established this position on or about June 18, 1954. Therefore, the claim, as it now rests, is concerned with the period between the date the position was abolished and June 18, 1954, when it was re-established.

Petitioner relies upon Paragraph (b) of the Scope Rule, and the Mediation Agreement and the Memorandum of Agreement dated December 14, 1949, these latter two understandings having been entered into to govern the handling of certain work following the deconsolidation at Fostoria effective January 1, 1950. Most of the discussion in the record goes to the matter of the application of Rule 1(b), the Scope Rule. In such discussions, the major controversy goes to the matter of whether the term "position" used in the rule is equivalent in meaning to the word "work." In this respect, the same controversy exists here as that revealed in Award 8664.

Here, just as in the companion case (Award 8664), the special agreements cited above are important. It is unnecessary here to decide the controversy in Rule 1(b) with respect to "position" vs. "work." The special agreements above cited use the word "work," and us it in such a way as to lead to the conclusion that it was the intent of the parties that the work in question would belong to the Clerks. The provisions of these two special agreements above cited use the word "work," and use it in such a way as to leads to the conclusion that the Carrier violated the agreements. This applies to the charge that certain of the work of the abolished position was performed by the agent-operator at Fostoria, an employe not under the Clerks' Agreement.

Part (a) of the claim must fall for lack of proof that there was any violation of the sort indicated. It is generally recognized that in the absence

of a contract to the contrary a Carrier may abolish positions. The two other employes referred to were under the same agreement. Here there was no transfer of work reserved to clerks to employes not under the agreement.

Part (b) of the claim is valid and will be sustained in accordance with the above discussion.

Part (c) of the claim would appear to be without merit, as we are not shown that the Carrier lacked the right to abolish the position.

Part (d) of the claim should be sustained at pro rata rate.

Part (e) is moot and requires no action inasmuch as the position has been restored.

The question has been raised as to whether there is any overlap in work for which compensation is claimed in Award 8664 and the instant docket. The claim here is sustained with the understanding there will be no over-lap in payment under the two awards.

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 Divison of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the applicable agreements as set forth in the Opinion.

AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1959.