

Award No. 8752
Docket No. CL-8250

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1) The Carrier violated the terms of the currently effective Agreement between the parties when, on March 22, 1952, without conference or agreement it abolished the position of Station Clerk at Mt. Vernon, Missouri occupied by James E. Bass and assigned a majority of the duties of the position to the agent and the telegrapher, neither of whom holds any seniority or other rights under the Clerks' Agreement.

(2) The said station clerk position be restored and bulletined to clerical employees in the Eastern Division Seniority District.

(3) James E. Bass and all others adversely affected by the Carrier's arbitrary and unilateral action, now be reimbursed for all monetary loss sustained, until corrected.

EMPLOYEES' STATEMENT OF FACTS: This is a re-submission of dispute originally submitted to your Board on April 30, 1953, covered by Docket CL-6614. On June 18, 1954, in Award 6683, the following Opinion, Findings and Award were issued:

"OPINION OF BOARD: It appearing that there are other parties involved in this dispute than the ones represented, within the meaning of Sec. 3(j) of the Railway Labor Act, to whom no notice was given, and the Carrier having properly raised the point as a matter of procedure, this claim must be dismissed without prejudice in line with Award No. 6680, this day announced.

"FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

"That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

In conclusion, it might be stated for the benefit of members of this Division that upon discontinuance of station clerk position at Mt. Vernon, Mo. on or about March 22, 1952, there remained three employees of this station—the agent, a telegrapher and a cashier (clerk). The remaining clerical cashier position was discontinued on or about January 18, 1955. A claim arising out of the discontinuance of that position was duly initiated by the petitioner in behalf of certain specified employees, including James E. Bass, the claimant in Docket CL-6614, and processed through appeals channels up to and including the highest officer of the Carrier designated to handle such matters. The claims were denied by the highest officer of the Carrier on March 30, 1955 and the time limit for processing them on appeal to this Division has expired.

All data submitted in support of Carrier's position have been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute.

Should this Division overrule the Carrier's objections and again docket the same dispute decided by Award 6683, oral hearing is requested.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to 1931 the station force at Mt. Vernon, Missouri, consisted of an Agent-Telegrapher and a Station Clerk. In August, 1931, the clerical position was abolished, Mt. Vernon thus becoming a one-man station. In May 1934 a Station Helper position was established at this location. In October 1935 this position was discontinued but a Telegrapher position was created at the same time, the station force thus comprising an Agent and a Telegrapher. In November 1936 the Station Helper position was reestablished. Seven years later, in August 1943, the Station Helper was reclassified as a Station Clerk. In June 1946 a fourth position was established, namely a Cashier. The station force then consisted of two positions covered by the Telegraphers' contract (Agent and Telegrapher) and two positions subject to the Clerks' Agreement (Station Clerk and Cashier). The record fails to disclose that any protest was lodged by the Clerks' Organization with respect to any of the changes in station force as above described.

In March 1952 the Carrier abolished the Station Clerk position due to a decline in the volume of work at this station. Some of the work formerly done by the Station Clerk remained, this work being divided among the Agent, the Telegrapher and the Cashier. The petitioning organization then filed the claim stated above, in which it was contended that the Carrier had violated the Agreement by abolishing the Station Clerk position and assigning a majority of the duties thereof to the Agent and Telegrapher positions. The Telegrapher performs telegraph service but the Agent does not.

This claim was progressed on the property and appealed to the Board, where it was identified as Docket CL-6614. By Award 6683, rendered on June 18, 1954, with Referee Bakke participating, the Board ruled: "Claim dismissed without prejudice." The accompanying Opinion stated it appeared there were other parties involved in the dispute, within the meaning of Section 3, First (j) of the Railway Labor Act, to whom notice had not been given. The Opinion noted that the Carrier had raised this point as a matter of procedure.

In January 1955 the Carrier abolished the Cashier position at Mt. Vernon, the station force thus reverting to only an Agent and a Telegrapher. The

Organization filed a claim arising out of this action. This claim was denied by the Carrier's highest appeals officer on March 30, 1955. The Organization has failed to appeal this claim to the Board within the prescribed time limit, with the result that this particular claim is barred.

By letter dated August 15, 1955, the Organization advised the Carrier that in view of the Whitehouse decision issued by the U. S. Supreme Court in June 1955, it wished to confer for the purpose of settling the claim which had been dealt with by Award 6683. The Carrier took the position that there was nothing to settle. Thereafter the Organization resubmitted the identical claim to the Board that was previously before the Third Division in Docket CL-6614. The Division having deadlocked on the disposition of the newly-designated docket, the identical dispute is now in the hands of a different Referee sitting as a member of the Division. Third party notice has not been given in the present docket.

It is to be noted that after having received Award 6683 the Organization made no attempt to have the substance of the original claim adjudicated on its merits, within the procedural requirements the Board had found applicable to the factual circumstances involved. The Organization has failed to appeal to the Board the abolishment of the only other clerical position that remained at Mt. Vernon, with the result that all of the work performed at this location is handled by the Agent and the Telegrapher. Thus the present pattern of work assignment is the same that existed at this location in 1935. We do not pass on the merits of the dispute that arose in connection with the abolishment of the Cashier position. We do think, however, that in view of the course of events as already described, it would be improper for the Board to now concern itself with the validity of the Carrier's action in connection with the abolishment of the Station Clerk position in March 1952. We would hold to this opinion, whether or not third party notice were to be given at this stage of the proceeding. A dismissal award is therefore warranted.

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 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 claim shall be dismissed in accordance with the Opinion.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of March, 1959.