

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

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

(1) Carrier violated the Rules of the Clerks' Agreement at Cincinnati, Ohio, when effective with Friday, May 1, 1953, it abolished Position No. 21, Counterman, Third Trick at Section A, hours 11:30 P.M. to 7:30 A.M., rate \$1.727 per hour, rest days Wednesday and Thursday, and concurrently therewith and subsequent thereto permitted and/or required employes not covered by the Clerks' Agreement to perform work which had been previously performed by employes holding positions fully covered by the Clerks' Agreement, and

(2) Carrier shall now compensate the following named employes at pro rata rate of Position No. 21 for the dates mentioned:

Friday	— May 1, 1953 —	Clavin Percer
Saturday	— May 2, 1953 —	M. M. Madden
Sunday	— May 3, 1953 —	G. A. Terry
Monday	— May 4, 1953 —	John Divens
Tuesday	— May 5, 1953 —	R. A. Kloenne
Wednesday	— May 6, 1953 —	} Harry Sams who was the regular relief man for position No. 21 and who was worked outside of his regular assigned hours on both these dates,
Thursday	— May 7, 1953 —	

such payments to be in addition to compensation paid, and

(3) Beginning May 8, 1953, and for every day thereafter, seven days each week, the senior Counterman (or the next senior Counterman on rest day as provided in the Memorandum of Agreement on Filling Vacancies) be paid an additional day at rate of \$1.727 per hour until position No. 21, Counter-

man, is restored. The names of such Claimants in this item to be determined by a check of Carrier's records.

**EMPLOYES' STATEMENT OF FACTS:** On April 30, 1953, Carrier issued the following bulletin:

"Effective May 1, 1953, Position No. 21, Counteraman, Section "A" Engine Terminal, will be abolished.

/s/ G. E. Westlund  
Storekeeper."

On May 1, 1953, the Local Committee protested the abolishment of the position and in conference was advised that the mechanical forces on Third Trick were to help themselves to the material in the storeroom during the hours 11:30 P.M. to 7:30 A.M. each day and that access to the storeroom would be secured by the use of a key in the possession of the Foreman or Assistant Foreman of the Mechanical Department who are not covered by the Rules of the Clerks' Agreement.

Under date of May 5, 1953, Division Chairman A. Heineman, Jr. sent a communication to the Storekeeper in which he advised him that on each night since the abolishment of the position, material had been taken from the Storeroom and that he would file claim for violation of the Scope Rule of the Agreement for eight hours at the pro rata rate from May 1, 1953 until the position of Counteraman was restored.

The dispute was progressed through regular channels when on June 17, 1953 Manager S. W. Rogers, who is the highest officer of the Carrier to whom such appeals are made, declined the request of the Committee as follows:

"This position was abolished in accordance with our present Agreement and the work is simply not there on this position and we are not willing to establish Position No. 21."

Subsequent to that time the Employees have been endeavoring to induce Management to restore the position but all efforts have been unproductive although the Employees' Committee have submitted lists of material obtained by the mechanical forces between May 1, 1953 and November 24, 1954.

On April 12, 1955, Carrier again declined the claim as follows:

"Referring to your letter of March 19, 1955 — Third trick Counteraman, Section A.

"On your lists of materials for certain days you have 57 very expensive items, such as springs, that are not under lock and key and do not require the services of a Counteraman.

"Due to the fact that the work is simply not there for a Counteraman on the Third trick, we are declining your claim."

Needless to say, we are in disagreement with Manager Rogers, there being no evidence produced by Management to sustain their position nor have they denied our contention that their act connected with this case is violative of the Rules of our working conditions Agreement.

"Under the circumstances as presented by the record, the following is deemed to be pertinent and determinative of this claim: As said in Award 5719, which involved a station at Alda, Nebraska, when the Nebraska State Railway Commission granted the Carrier the right to discontinue the station: "This Division has rendered a substantial number of awards dealing with Carrier actions in discontinuing such positions as the one at Alda. These awards have generally recognized the rights of the Carrier to discontinue a position where the work of that position declines to a point where a substantial part of the employee's time is not occupied with the duties of the position. Awards 439, 4759, 4385, 5127, 5283, 5318. In the instant case there was such decline of duties at Hassell. (See also Award 5999.)"

### CONCLUSION

1. The Carrier has shown that on account of the decrease in steam locomotive dispatchments and the increase of diesel locomotives the work of the position of third trick countermand in Section "A" in roundhouse has practically disappeared.

2. That material stored outside of the regular storeroom such as at roundhouse, repair track in coach yards, in the two rooms in passenger station, Signal and Maintenance of Way Departments, is not disbursed by countermand but is procured by mechanics for their work and material tickets are not all handled by the countermand.

3. That material is being procured by mechanics out of the storerooms irrespective of the presence or absence of the countermand.

4. That the procuring of material from a storeroom is not now, and never has been work belonging either exclusively or solely to the employees under the Clerks' Agreement.

5. The Carrier asserts that based on past practice on this property, and the facts shown in this case, and based on the holdings of this Division, the conclusion necessarily pursues that procuring material from a storeroom is by no means work belonging exclusively or solely to employees under the Clerks' Agreement.

A sustaining award would be contrary to Agreement Rules and would impose a severe penalty against the Carrier by requiring it to keep un-needed workers, the attendant expense and economic waste. The Carrier submits that the claim herein involved is not supported by the applicable Agreement and is therefore without merit and should be denied.

All data in support of Carrier's position has been exchanged with the employees in conference on the property.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The record shows that on April 30, 1953, Carrier abolished by bulletin the position subject of the dispute herein, as follows:

"Effective May 1, 1953, Position No. 21, Countermand, Section 'A' Engine Terminal, will be abolished."

The position abolished was on the third trick, Counterman Position, with hours from 11:30 P.M. to 7:30 A.M. It is alleged by the Organization that mechanical forces employees following the abolishment of Position No. 21, were to secure necessary materials from the storeroom, key for which was in the possession of Mechanical Department employees on this shift, but prior to May 1, 1953, was in possession of the employee whose position had been abolished, and was covered by the Clerks' Agreement. Mechanical Department employees are not affiliated with the Clerks' Organization but are members of another craft. Accordingly, claims are progressed here, on the allegation that Carrier, by abolishing the position, has transferred the work remaining to employees of another craft, all in violation of Rule 1—Scope Rule, also Note 1 of Rule 1.

Carrier contends the work involved in the abolished position was not exclusively performed by Clerks' Organization employees prior to the abolishment of the position, and alleges it has been the practice and custom since 1933 to allow employees of the Mechanical Department to obtain their required materials from the storeroom directly, without the assistance of storeroom employees, but material tickets were filed with the storeroom clerk, on occasion, after the materials were obtained.

There is evidence in the record that prior to the abolishment of the Clerk position, the materials were issued by Clerks; that since such time Mechanical employees had the keys for such storehouse in their possession, and took over the responsibility of the storehouse materials, and keeping such records as were formerly required of Clerk employees. There is also shown by the record, and is admitted by Carrier, that 83% of the work formerly performed by Clerks had disappeared but 17% of the work still remained after the position was abolished.

Under the facts and record before the Board, we are of the opinion that the Rule 1, Scope Rule, coupled with the provisions as set out in Note 1, of the rule, is sufficient to support a sustaining award. While the Scope Rule itself as written does not described the specific duties of clerks employed, under the agreement, Carrier admits that 17% of the work formerly required of Clerks still remains.

Rules 52 and 53 of the Agreement provide for ways and means for the parties to amend the existing agreement, but neither of the parties are obligated by Rules 52 and 53 to apply such provision. Carrier had such an opportunity but failed to comply with such rules, although it admits a portion of the work remains, which was formerly performed by Clerks.

The Board has in numerous dockets, where there are unnamed claimants, denied and dismissed such claims where a sustaining award has been made in favor of named claimants. Such unnamed claims have been held to be vague, indefinite and uncertain. But here, in the case before us, we have determined that Carrier has violated the Agreement between the parties. Ordinarily, this Referee has denied claims of unnamed employees, but in view of the violation by Carrier, we are of the opinion, that a check should be made of Carrier's records to determine the names of any claimants who should be compensated as alleged in paragraph (3) of the Statement of Claim. This is the only way it can be properly determined, over what period of time the violation has continued, and to allow proper compensation to employees entitled to consideration. Such action here is not intended as to require Carrier to open its records to develop claims for employees. See Award No. 5700.

**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 the Carrier has violated the Agreement, under the provisions contained in Rule 1, also Note 1 of said Rule and the claim should be sustained.

#### AWARD

Claim 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 8th day of April, 1959.