

Award No. 9211
Docket No. CL-8211

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

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

1. The Carrier violated the Clerks' Rules Agreement when it abolished clerical position No. 20 in the Office of the SCD at Milwaukee Shops on April 16, 1954 while the preponderant duties of the position remained to be performed.
2. The Carrier re-establish position No. 20 in the Office of the SCD.
3. The Carrier return employee Bernice Kruse to position No. 20 in the Office of the SCD and compensate her and all others affected by the abolishment of position No. 20 for all loss suffered from April 16, 1954 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Employee Bernice Kruse was the regularly assigned clerk on position No. 20 in the Office of SCD. Her seniority date in seniority district No. 58 is January 2, 1918. The duties of her position consisted of the following work: Car Repair Record for System Cars, Form 617; Bad Order Reports; Timekeeping and all reports in connection therewith; Sort Weight Tickets received from stations, list in numerical order, and enter light weights of cars; CS-60 Report; Cars Reweighed; Unserviceable Cars; Equipment Retirement Reports, Form 533.

Prior to April 16, 1954 the work in connection with the Car Repair Records for System Cars, Form 617 was discontinued. On April 16, 1954 Position No. 20 was abolished and the remaining duties of the position were distributed in the following manner:

clerical and computing work principally in connection with the bad order car report, all of which is similar to the normal duties of her position.

In this regard we should like to direct attention to Third Division Award 6500 and we quote the following from the Opinion in that Award:

"The claim also avers a violation of the Agreement when other duties assigned to lower rated positions within the Scope of the Agreement but there is no showing that the duties so reassigned were not properly within the assigned duties and responsibilities of those lower rated positions. Thus we are unable to say that such reassignment of duties violated the Agreement."

The higher rated work remaining from abolished Position 20 was transferred to Positions 15 and 16. As we have said, the rates of the latter two positions were in excess of the rate of abolished Position 20. The work from abolished Position 20, which was transferred to Positions 21 and 23, was lesser rated work comparable, similar and identical to the normal work and duties of Positions 21 and 23.

The employees have made reference to Rule 19 and they allege that the "principles of Rule 19" were violated. There was no new position "created under a different title covering relatively the same class" of work and the Carrier cannot agree that Rule 19 is applicable in this case nor has there been any violation of that rule. It has been the position of the employees that the Carrier be required to restore Position 20 and there has been no claim presented to the Carrier in behalf of the occupants of Position 21 and/or 23 for an adjustment in rate of pay of either of those positions nor does the Carrier agree that under the circumstances prevailing there would be any adjustment in rates warranted. The 8 hours per month of stenographic and clerical work transferred to Clerk-Steno Position 23 certainly would not warrant an adjustment in rate of pay of that position and the transfer of 34 hours per month of clerical and computing work to Steno-Comp Operator Position 23 would not warrant an adjustment in the rate of pay of that position.

There has been no violation of the schedule rule. There can be no proper basis for the restoration of Position 20 nor any claim in behalf of employe Kruse in connection with the abolishment of that position and it is the Carrier's position that the transfer of a limited amount of lesser rated work of abolished Position 20, similar to the normal duties of Positions 21 and 23, cannot justify any adjustment in the rates of pay of those positions.

The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that the Carrier violated the Agreement by abolishing clerical position No. 20 on April 16, 1954. It is undisputed that some of the duties of that position had been discontinued and that at the time it was abolished the remaining duties were distributed among four other clerical positions. These four positions as well as position No. 20 were all within the same class, seniority district and Agreement.

There is sharp controversy regarding the amount of work that remained after the position was abolished. The Carrier maintains that 59 hours were required monthly to perform the remaining duties and in support thereof has submitted a signed statement of each of the four employees to whom that work was assigned. Petitioner, on the other hand, contends that 151 hours of work remained each month, but the record is barren of evidence helpful to that contention; while the Carrier's refusal to participate in a joint check of the remaining duties may possess some significance, particularly where there is a real conflict of evidence rather than of mere contentions, it certainly does not constitute competent evidence regarding the point. Accordingly, Petitioner has not sustained its burden of proof and we cannot accept its bare assertion as to the amount of position No. 20 work that remained after April 16, 1954. Nor can we agree that, under the circumstances of this case and the rules of the Agreement, Carrier is proscribed from abolishing the position in question and rearranging the remaining duties thereof in the interests of economy and efficiency of operations. See Awards 4939, 5283, 5803, 6187 and 6944. There is no evidence that the reassignment of duties was a subterfuge or part of a program to circumvent the wage and job classification requirements of the Agreement. The claim will be denied.

In view of these findings, it is unnecessary to consider other objections raised by the Carrier in this matter.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of January, 1960.