

Award No. 9476

Docket No. CL-8536

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William E. Grady, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

a. The Carrier has violated and continues to violate the rules of the Clerks' Agreement in failing and refusing to return to clerical employes the routine clerical work formerly performed by clerical employes at the Lyoth Quartermaster Depot.

b. Mr. John M. Rustan, and any other clerical employe adversely affected, be compensated at the overtime rate for all time consumed by the Agent at Lyoth Quartermaster Depot, in performing clerical work as shown by the joint check of January 28, 1955, which clerical work had formerly been performed by clerical employes at Lyoth Quartermaster Depot—this claim to run from November 1, 1954, until the violation is corrected.

NOTE: This claim to include clerical work performed on regularly assigned days as well as on rest days and holidays on which such work is performed by the agent. The time so consumed can be determined by a joint check of the Carrier's payrolls, timerolls, overtime slips, etc.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 16, 1954, the General Chairman wrote Superintendent Curtis as follows:

"This has reference to the clerical work now being performed by the Agent at Lyoth Quartermaster Depot.

My investigation reveals that the Agent is performing routine clerical work in signing bills of lading, sealing cars, making switch lists, all of which work was performed by clerical employes, as revealed by the joint check made at Lyoth Quartermaster Depot by Trainmaster L. A. Henry and Mr. R. J. McCarthy, former General Chairman, on February 6, 1945.

IV

Certain duties performed by the Agent, which the Organization alleges should have been performed by the Clerk, are not duties belonging exclusively to clerks.

In the handling of this case on the property the General Chairman has referred to certain duties which the Agent performed as belonging exclusively to clerks, but, as near as Carrier can determine from its records, has not specifically identified all of these duties which he alleges can not be performed by the Agent. In the event that these duties are more specifically identified in the Employees' Ex Parte Submission, Carrier reserves the right in its Rebuttal Statement to take whatever exception it deems necessary to allegations which may be made therein with respect to this matter.

In conference, the General Chairman alleged that the preparation of the X-11-A Report for commodities held in transit at Rhodes, a nearby blind siding, is a duty belonging exclusively to the clerk at Lyoth Quartermaster Depot Agency. This statement is incorrect; clerical employees at Lyoth Quartermaster Depot Agency have never performed any work in connection with Rhodes. Prior to 1946 all Rhodes work was performed by Agent Miller at Lyoth Station (an agency formerly located on Carrier's main line and separate and distinct from the Lyoth Quartermaster Depot Agency). During 1946 the Rhodes work was removed from Agent Miller at Lyoth and was assumed by Agent Sullivan at Lyoth Quartermaster Depot. Thus, in 1945 when the former joint check was made (see Carrier's Exhibit "B") the Rhodes work was being performed by the Agent at Lyoth and not at all by anyone at Lyoth Quartermaster Depot; subsequent to 1946 the work was performed by the Agent at Lyoth Quartermaster Depot; to Carrier's knowledge it was never performed by clerical employees at either point.

In summary Carrier emphatically states that the instant claim is wholly without merit and should be denied for the following reasons:

1. Claimant is not entitled to penalty payments because he participated in setting up the arrangement out of which the claim arose.
2. The portion of the claim for "... any other clerical employees adversely affected ..." is too indefinite and vague to comply with the requirements of Article V of the Agreement of August 21, 1954.
3. No showing has been made by the Organization that any clerical employee has been adversely affected by any action attributable to the Carrier.
4. Certain duties which the Organization alleges should have been performed by the clerk are not duties belonging exclusively within the Scope of the Clerks' Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim concerns performance of certain clerical work by the Agent at Lyoth Quartermaster Depot, and asks compensation at overtime rates from November 1, 1954, for Cashier-Clerk J. M. Rustan, herein called "Claimant". Notice has been given to the Order of Railroad Telegraphers under Section 3, First (j) of our statute.

A brief statement of the background of this dispute is in order.

A joint check on February 6, 1945 showed the Agent at Lyoth to be performing certain clerical work. On February 16, 1948, the last remaining clerical position at Lyoth, namely "General Clerk" was abolished and thereafter the Agent did all the clerical work. A claim was submitted, Docket CL-5763 and sustained in Award No. 5790 on May 23, 1952. Re-establishment of the abolished position was not directed.

The affected employe in that case, is the Claimant here.

The abolished position was re-established on January 17, 1949, as "Cashier-Clerk" and Claimant was assigned to it.

On July 2, 1954, the parties composed their differences concerning Award No. 5790. Claimant received pay for the period during which the position had been abolished. It was agreed that matters would remain in status quo and that Rule 40 (f) would govern "the Lyoth situation in the future". Rule 40 (f) provides for allocation of clerical work when a clerical position is abolished and for revival of abolished positions.

The instant claim was filed on December 12, 1954, asserting that Claimant should have been used on an overtime basis to perform the clerical work being done by the Agent. A joint check on January 24, 1955, resulted in agreement that the position of Cashier-Clerk could not be abolished.

The previous controversy involving abolishment of the position was disposed of on July 2, 1954. Rule 40 (f) invoked in support of this claim has no application for the revived position has not been abolished. The Rule cannot become applicable unless and until the position is again abolished.

The claim is without merit and will be denied.

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

That the parties waived oral hearing;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 there was no violation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1960.