

Award No. 10638

Docket No. CL-9905

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(a) Carrier violated 9(a)(4)a, 1(g) and related rules of the Clerks' Agreement at Liberty Street, New York, N.Y. when on April 6, 1957 it abolished position #172, Ticket Clerk and required the Agents to perform the remaining clerical work of the abolished position, and

(b) Carrier be required to immediately reassign the remaining clerical work of abolished position #172 to other clerical positions at Liberty Street, New York, N.Y.

EMPLOYEES' STATEMENT OF FACTS: Position #172, Ticket Clerk, was a full scope position, the assigned duties of which were to maintain ticket accounts, record ticket sales and make ticket reports. This position was abolished at the end of tour of duty, April 6, 1957.

This position while still in existence, was designated by the Carrier as working at a location known as Liberty Street Terminal, New York, N.Y. There are, at the present time, other clerical positions assigned and working at Liberty Street Terminal, New York, N.Y.

The remaining work of subject abolished position has not been assigned to other clerical positions.

POSITION OF THE EMPLOYEES: There is in evidence an Agreement between the parties from which the following rules are quoted, in whole or in part, for ready reference:

"RULE NO. 1 — SCOPE

(a) These rules shall constitute an agreement between The Central Railroad Company of New Jersey; The New York and Long Branch Railroad Company; Wharton and Northern Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight

Therefore, under the provisions of Paragraph (b) of this rule, "In the event no such position under this agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent * * * provided that less than four (4) hours work per day of the abolished position or positions remains to be performed; and further provided, that such work is incident to the duties of an Agent * * *", the remaining duties in the instant case were properly assigned to the Agent and there has been no violation of the rules cited by the Employees.

In consideration of the facts contained herein, namely:

(1) Violation of the provisions of Article V (b) of the August 21, 1954 National Agreement in the handling of this dispute on the property by the Employees;

(2) The Carrier has not violated any of the provisions of the current agreement cited by the Employees;

This claim should be denied in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the Employees representatives.

OPINION OF BOARD: This involves the abolishment of Position #172, Ticket Clerk, at Liberty Street Terminal, New York, N.Y., of Carrier at the end of tour of duty, April 6, 1957, and the assignment of the remaining duties of said position by the Carrier thereafter.

It is the claim of Organization that Carrier had discontinued certain work duties of the position of ticket clerk, position #172 so that the clerical work incident to said position would be less than four hours per day and that said clerical work was thereafter assigned to the Ticket Agents at that location. That the assignment of such work to the ticket agents is a violation of the Agreement between the parties: that the remaining work of the abolished position should have been assigned to other clerical positions at said Liberty Street Terminal.

Organization claims that the following rules of the Agreement are controlling here:

"RULE NO. 1 — SCOPE

(a) These rules shall constitute an agreement between The Central Railroad Company of New Jersey; The New York and Long Branch Railroad Company; Wharton and Northern Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and shall govern the hours of service, working conditions and rates of pay to Employees in the following positions and those performing similar work for the Companies parties hereto; subject to exceptions specified in this rule:

"GROUP 1

(b) Office, station and storehouse Employees such as:

* * * * *

Clerks (as defined in Rule 2)

* * * * *

Clerks, Ticket

"Exceptions:

(g) Positions or work within the scope of this Agreement belong to the Employees covered herein as provided for in these rules and nothing in this Agreement shall be construed to permit assigning this work to other than Employees covered by and as provided for in these rules or prevent the application of these rules to such positions or work except as provided for in Rule 9(a)(4)(a) or by mutual agreement between the Management and the General Chairman."

* * * * *

"RULE NO. 9 — REDUCING FORCES
(as revised 11/01/55)

(a) Abolishing Positions --

(1) The Employing Officer or Supervising Official will notify the Local Chairman and the District Chairman, in writing, including detailed reassignment of remaining duties, at least five calendar days in advance of abolishing any position, except as provided in Rule 9(a)5 and will give the Employees whose positions are to be abolished as much advance notice as possible and not less than 48 hours using prescribed Form 'D'.

(2) Positions to be abolished will be bulletined on prescribed Form 'D' to all Employees in the seniority district at the same time the affected Employees are notified.

* * * * *

(4) When a position covered by this agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(a) To another position or other positions covered by this agreement when such position or other positions remain in existence at the location where the work of the abolished position is to be performed.

(b) In the event no such position under this agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yardmaster, Foreman or other supervisory employe."

* * * * *

"RULE NO. 46 — EFFECTIVE DATE AND CHANGES

This agreement shall be effective as of December 15, 1952 and shall continue in effect until it is changed as provided herein or under the provisions of the Railway Labor Act, as amended."

For the sake of brevity, we have not included all of the positions included in Group 1 of the Scope Rule No. 1; the particular positions we deem pertinent here will be pointed out hereafter.

Organization's contentions are that the Scope Rule, Rule 1, quoted in part herein, specifically names the employes and the work covered thereby and spells out those that are not covered: that this rule places the clerical work here involved under the scope and operation of the Agreement: that this rule also identifies Clerks, Ticket Clerks and other employes covered by the Agreement who acquire seniority rights to exclusively perform clerical work covered thereby. That work is to a position what seniority is to an employe and that the work in question is specifically covered by the Scope Rule of the Agreement.

That the work could only be removed in the manner the Agreement provides, either pursuant to Rule 1(g) or by Carrier proceeding under Rule 46, by requesting a change in the rules in the manner prescribed by the Railway Labor Act, as amended. This latter step Carrier did not follow and we are concerned here with Rule 9(a)(4)(a) which provides that when a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned to another position or positions when such position or other positions remain in existence at the location where the work of the abolished position is to be performed.

Organization contends that the following clerical and Group 1 positions remained in existence at the time the Ticket Clerk's position was abolished and the remaining duties assigned thereto could have been assigned to certain of these clerical employes; that they could not be given to others not covered by the Clerks' Agreement:

'POSITION NO.	TITLE
171	Stationmaster
173	Clerk-Checker
175	Baggage Agent
176	Assistant Baggage Agent
177	Baggage Checker
193	Vehicle Collector (first trick)
194	Vehicle Collector (second trick)
195	Vehicle Collector (third trick)
196	Supervisor Information Bureau
197	Information Clerk
198	Information Clerk
Cycle #3	Information Clerk"

That Carrier violated the Agreement when it failed to assign all of the remaining duties of such position to an occupant or occupants of existing clerical positions.

Carrier maintains there is little dispute between the parties concerning the following facts:

That, prior to April 6, 1957, two Ticket Agents and a Ticket Clerk who assisted the agents were located in the Ticket Office at Liberty Street, New York.

That, on April 6, 1957, one of the Ticket Agents' position was abolished thereby reducing the clerical work by half, and, at the same time, by Carrier's streamlining of the monthly reports and decreasing the number of daily reports to one a week, the clerical force was further reduced and the Ticket Clerk's position was also abolished.

That less than four hours of work per day of the abolished Ticket Clerk's position remained to be performed: that such work is incident to the duties of the Agent: that such work continues to be performed in the ticket office which is in the Liberty Street Terminal Building.

Carrier states that inasmuch as Rule 9(a)(4)(a) is an exception to Rule 1(g), the record shows that determination of the question at issue involves an interpretation of the term "at the location where the work of the abolished position is to be performed".

Carrier maintains that in the instant case, the "location" of the abolished Ticket Clerk's position was the ticket office and there is no evidence in the record which refutes Carrier's showing that no clerical position remained in existence at the Ticket Office where the remaining work of the abolished position was and continues to be performed.

Organization in stating its position, states, "The term 'Liberty Street' as used on bulletins and any other related items, refers exclusively to those positions under the supervision of the Station Agent and includes the ticket offices, baggage room, information bureau, vehicle collection booths and the passenger collectors". It further claims that twelve clerk positions remained at the location where the work of the abolished position was to be performed.

Many Awards have been cited in connection with this matter, but none to the direct point involved here, except an Award in Docket No. 12, Special Board of Adjustment 192, involving Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and The Baltimore and Ohio Railway Company, where a similar rule was involved, wherein the following Findings were made in part:

"... Rule 1(c)1 requires that when a covered position is abolished the work assigned thereto which remains to be performed will be reassigned to position or positions covered by the agreement when such position or positions remain in existence at the location where the work of the abolished position is to be performed. Although the Carrier argues that there were no covered positions remaining in the Division Engineer's office it is shown that there were covered positions at Grafton in an adjacent office. The rule is not confined to a given office but rather treats of a 'location'. Clearly an adjacent office under the circumstances here present would come within that designation."

We agree with the foregoing. We do not believe that the "location" should be given the narrow and limited construction as claimed by the Carrier. We hold that there were clerk positions remaining at the location where the work of the abolished position was to be performed.

Finally, Carrier in its Ex Parte submission, raised the question of an alleged violation of the time limits for processing grievances. This was not raised on the property; the claim was processed to the highest officer of the Carrier, without this question being raised and the denial of the claim was made on the merits. We deem this defense waived, as it is procedural and not jurisdictional. Award 9578 and 10075.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1962.