

Award No. 11010

Docket No. CL-9373

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

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

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

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

The Carrier violated and continues to violate the Clerks' Rules Agreement when it abolished Roundhouse Clerk Position No. 52 at Marquette, Iowa and turned over some of the work and duties, which were a part of that position, to the Roundhouse Foreman and others who are employees outside the Scope and Application of that Agreement. Therefore, the Carrier shall now be required to:

1. Return the work which was a part of Roundhouse Clerk Position No. 52 now being performed by the Roundhouse Foreman or others outside the scope and application of the Clerks' Rules Agreement to employees covered by the Clerks' Rules Agreement in Seniority District No. 56.
2. Compensate Employee Christine Noble and all other employees in Seniority District No. 56 affected directly or indirectly as a result of the abolishment of Roundhouse Clerk Position No. 52 for all loss suffered from September 1, 1955 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On August 26, 1955 Division Master Mechanic W. W. Henderson issued Clerks' Notice No. 1 to All Clerical Employees in Seniority District No. 56 abolishing Roundhouse Clerk Position No. 52 at the Marquette Roundhouse, Marquette, Iowa effective September 1, 1955. The regular occupant of the position was Christine Noble.

On August 30, 1955 Superintendent J. T. Hayes issued the following bulletin:

"The Record clearly establishes that the only part of the work of the abolished position that was performed by any Foreman, was 45 minutes per night performed by the Night General Foreman. The Record further establishes that the particular type of work so performed, involving use of the telephone in the General Foreman's office, does not belong exclusively to employees under the Clerks' Agreement, but is incidental to the Foreman's position and was performed by the Foreman prior to the abolishment of the Clerk position. The Employees have failed to prove that any Foreman performed any work belonging exclusively to employees under the Clerks' Agreement. This recognized, the claim must be denied. See Award 3494."

Also, there have been awards, as an example, Award 6032, holding that where "the scope rule lists positions instead of delineating work, it is necessary to look to tradition, historical practice and custom to determine the work which is exclusively reserved by the scope rule to persons covered by the agreement". In this regard we would direct attention to the fact that the Roundhouse Clerk was assigned 8 A. M. to 4 P. M. Monday through Friday. The Roundhouse Clerk was not assigned or used on Saturday and Sunday and although quite limited, any necessary work on Saturday and Sunday as well as any necessary work outside of the assigned hours of the Roundhouse Clerk on weekdays was performed by the Roundhouse Foreman.

However, as indicated above, we feel the important fact is that all work of the Roundhouse Clerk position had either expired, was eliminated entirely or transferred to employees at Savanna who are covered by the scope of the Clerks' Agreement and in the same seniority district and we maintain there has been no violation of the schedule rules through the abolishment of the unnecessary Roundhouse Clerk Position.

We respectfully request that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The old maxim "where there's smoke there's fire" applies to this claim—but it is only a little fire: not enough to support the claim.

There is no question but that the roundhouse foreman performed some work which was done by the clerk before the position was abolished. Despite the seemingly endless point and counterpoint by each of the parties to the dispute, however, the only substantive question to be decided is whether the foreman was precluded from doing this work by rule or practice. We do not think so.

The material facts are that due to radical changes in operations the last roundhouse clerk's position at Marquette, Iowa was abolished. Much if not most, of the clerical work was transferred to other clerks in the same seniority district at another location. Other clerical work was eliminated and still other such work was assumed by the roundhouse foreman. The claim is based on this latter work.

The Employees charged that the roundhouse foreman at Marquette assumed work previously handled by the clerk at that station including,

in particular: marking up the train board, handling lay offs and displacements, receipting and posting Superintendent's bulletins and performing other miscellaneous duties such as answering the telephone, answering correspondence and incidental work in connection with filing reports, etc.

The Carrier contended that whatever of this work was done by the foreman was minimal and incidental to his responsibilities as foreman; that it was work he had performed from time to time even before the clerk's position was abolished; and, accordingly, that neither practice nor the scope rule reserved this work to the clerks.

We are persuaded that the Clerks' Agreement was not violated—for the reasons given by the Carrier. Further, we think the recent decision in Award 10067 (Weston), decided for the Carrier, is controlling here because it covered the same issue, between the same parties on almost identical facts. In that case the Board said:

"Carrier states that the Foreman spends only five minutes monthly in marking up the board and a like number of minutes daily in receipting and posting the bulletins. We regard any such working time as inconsequential for purposes of this claim and not a threat to a position or collective bargaining agreement.

As to the answering of telephones and correspondence, Carrier maintains that the Foreman always had performed those duties as a normal incident of his position; we considered this argument reasonable in the light of the nature of the work and the absence of any showing by Petitioner of volume and Claimant's specific responsibilities with respect to these functions."

The opinion in Award 10067 that the Claimant's failure to make a case is not affected by Carrier's refusal to make a joint check of the facts is also adopted for the purposes of this dispute.

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 20th day of December 1962.