

Award No. 11137

Docket No. CL-10970

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

READING COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules and understandings of the Clerical Agreement:

1. When on October 31, 1957 the Chief Engineer of the Reading Company discontinued position of Clerk in Office of Resident Engineer, Reading, Pa., and assigned the duties and work to other employees not covered by the Scope Rule and outside the terms of the Clerical Agreement, without required conference, negotiations and other agreed upon procedures and requirements of Clerical Agreements.

2. That position of Clerk, Office of Resident Engineer, be restored and Mary Lipman, incumbent of the position prior to October 31, 1957, be returned and assigned to position with seniority in District #7 unimpaired and also be compensated for all monetary wage loss subsequent to date position was discontinued and up to the date position is restored.

3. That Louis Salvatore, Clerk in Seniority District #15, displaced by reason of exercise of seniority by Mary Lipman and being required in turn to exercise his rights to an Extra Board, that he and/or his successors on such Extra Board also be compensated for all monetary wage loss subsequent to October 31, 1957 and until the improper actions of the Carrier are corrected.

4. That Carrier be required to enter into a joint check for the purpose of having the clerical duties properly restored to clerical employees and also developing monetary losses to the employees involved.

EMPLOYEES' STATEMENT OF FACTS: On October 25, 1957 the Chief Engineer of the Reading Company posted Bulletin No. 11, reading as follows:

tions at that location or office; providing that less than four hours work per day of the abolished scope position remains to be performed and that such work is related to the duties of the non-scope position."

In view of all the facts and circumstances presented herinbefore, it is the position of the Carrier that the last remaining clerical position in the office of the Resident Engineer at Reading was properly abolished in accordance with the applicable provisions of the rules of agreement and the August 19, 1946 Memorandum of Agreement. Therefore, Carrier maintains that there is no merit in the claim of the Organization for restoration of the position and for compensation for the incumbent of the position and others whom the Organization contends were adversely affected, and Carrier submits that the claim should be denied in its entirety.

All data submitted in support of the Carrier's position has been discussed with and presented to the duly authorized representatives of the Clerks' Organization and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is between Grand Lodge Brotherhood of Railway Steamship Clerks and the Reading Company.

On October 31, 1957, the chief engineer of the Carrier discontinued the position of clerk in the office of the resident engineer at Reading, Pennsylvania. Some of the work was discontinued; the remaining work was assigned to employees not covered by the Scope Rule of the Clerks' Agreement.

On October 25, the chief engineer posted a bulletin abolishing the position and on the same date notified the division chairman of the clerks Brotherhood Committee that the position was going to be discontinued. In a letter of October 28th the division chairman objected to the abolishment of the position and requested full compliance with Rule 13 of the Agreement. Under date October 30, the chief engineer again wrote the division chairman offering a joint check the following day. Under protest, the division chairman agreed to the joint check. A copy of the joint check is included in the evidence.

The following Rules are pertinent to this dispute:

"RULE 13

"(b) Positions or work within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules except through negotiations.

"(e) When there is a sufficient change in the regular assigned duties and responsibilities of a position or in the character of the service required, the compensation for that position will be subject to adjustment by mutual agreement between the Management and the General Chairman, but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules.

"(f) When positions are abolished any remaining duties will be re-assigned through conference in conformity with paragraph (e) of this rule."

Also pertinent are paragraphs 3 and 4 of the Memorandum of Agreement:

"Any remaining duties of the position abolished will be reassigned to other scope employees at that location or office. In cases where there is no remaining position under the Clerks' agreement at the office or location where the work of the abolished position is to be performed, the remaining duties of the scope position may be reassigned to the remaining non-scope position or positions at that location or office; providing that less than four hours work per day of the abolished scope position remains to be performed, and that such work is related to the duties of the non-scope position.

"If the employing officer or supervising official is notified by the Local or Division Chairman before the effective date of the abolishment of the position of any disagreement concerning the re-assignment of the remaining work items, an immediate report will be made to the head of the department and prompt arrangements made for a joint check between a representative of the Management and the Organization. In such instances the position will be continued until the joint check is completed and the Organization representative notified of the decision of the Management."

In the instant dispute there is no remaining position under the Agreement at the office or location where the work of the abolished position is to be performed. Under paragraph 3 of the Memorandum of Agreement the remaining duties of the scope position may be reassigned to the remaining non-scope positions or positions at that location or office, providing that less than four hours work per day of the abolished scope position remains to be performed, and that such work is related to the duties of the non-scope position.

We are of the opinion that the chief engineer acted arbitrarily. The Carrier did not allow the Organization the joint check in time to protest. The Carrier had already determined the position was going to be abolished. In its hurry to accomplish its purpose the Carrier violated the Agreement.

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 14th day of February 1963.