

Award No. 11584
Docket No. CL-10794

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

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

(a) Carrier violated the current clerical Agreement when, on November 7, 1957, they abolished the Chief Yard Clerk position at Haileyville, Oklahoma, and assigned the duties of calling train and engine crews, checking the Yard, checking trains, making Yard reports, supplying cabooses, and various other clerical duties, to the Agent and Operators.

(b) Carrier shall be required to restore the position and work of the Chief Yard Clerk, which was improperly removed from the scope of the current clerical Agreement, to employes covered thereby, and H. M. Gyles be paid eight (8) hours per day, seven (7) days per week, effective November 7, 1957, at rate of \$376.59 per month based on forty (40) hours per week, and two (2) additional eight (8) hour days each week at punitive time.

EMPLOYES' STATEMENT OF FACTS: Haileyville, Oklahoma, is a Yard Terminal on the Chicago, Rock Island and Pacific Railroad, where trains are made up and crews are changed on various trains, making it necessary to check the Yard, prepare bills for cars moving in trains out of Haileyville and to call all train and engine crews for each train operating out of Haileyville.

The following notice was served by the Superintendent, October 28, 1957:

"Little Rock — Oct. 28, 1957

"Mr. H. M. Gyles
Chief Yard Clerk
Haileyville, Okla.

"Dear Sir:

"On completion of your tour of duty as chief yard clerk at Haileyville, November 6, 1957, the position of Chief Yard Clerk at Haileyville is abolished.

At end of switch crew's tour of duty April 23, 1958, the Haileyville switch engine was abolished. On that date switches leading into yard tracks were spiked, leaving main and side track open. The duties of checking yard, making yard reports and weighing cars, which had been performed by Chief Yard Clerk prior to November 7, 1957, and performed by telegraphers November 7, 1957 to April 23, 1958, ceased to exist after April 23, 1958.

As stated in Carrier's Statement of Facts, Haileyville Agency was closed effective October 1, 1958. The authority for discontinuing this station granted by Order Number 37738, dated September 17, 1958, of the Corporate Commission of the State of Oklahoma.

As stated above, all duties that had been performed by Chief Yard Clerk prior to November 7, 1957 and performed thereafter by telegraphers ceased to exist after April 23, 1958. The employes are seeking to have your Board sustain their claim whereby the Carrier will be required to restore the position and the work of the Chief Yard Clerk and compensate the claimant for each day since the position was abolished, even though the duties previously performed by the claimant ceased to exist after April 23, 1958. We have shown that your Board has consistently held that this Carrier has the right under the applicable Clerks' Agreement to assign clerical duties to telegraphers to fill out the hours of their assignment. We did not violate any rule of the Clerks' Agreement.

Even if claim had merit, which we deny, we submit that the claimant in this case, Henry M. Giles, even if his position had not been abolished, would not have been available for work on which claim is based because since November 9, 1957, he has been on an extended leave of absence account physical disability. Therefore, he has not been injured in any respect in loss of any earnings. In any event, if he were not on an extended leave of absence, he would be obliged to exercise his seniority rights and would have secured a position paying him as much or more per month than position abolished and, hence, here, too, he would not have suffered any monetary loss as he could not work two positions at the same time.

We submit on basis of the facts in this case there was no violation of the agreement nor have the employes produced any evidence of loss by the claimant, nor basis, under the rules, and we respectfully request denial of the claim.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

OPINION OF BOARD: The issue posed by this claim has recently been decided adversely to Petitioner in Awards 10301, 10741 and 11336. Each of these awards involved the same parties as in this case, and we find nothing in the record to warrant departure from them. In Award 11336, it was said, with reference to Awards 10301 and 10741:

"The case before us is not one of first impression on this particular property. . . .

"It appears to the Board these recent decisions should control the disposition of the instant case under an application of the doctrine of *stare decisis*—stand by decisions and do not disturb settled matters."

Accordingly, the claim must 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 Employes involved in this dispute are respectively Carrier and Employes 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 10th day of July 1963.