

Award No. 11845
Docket No. CL-10919

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**

GEORGIA RAILROAD

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

(a) The Carrier violated the Agreement between the parties when, at Grovetown, Georgia, it claimed to "abolish" the position of "Clerk" fully covered by the Clerks' Agreement effective with end of assignment, Tuesday, October 15, 1957, and assigned the duties thereof to employes not covered by the Clerks' Agreement, and as a penalty:

(b) Claimant B. F. Moss, occupant of "Clerk", Grovetown, Georgia on the date it was claimed to be "abolished" shall now be additionally compensated a days' pay at the rate of the position of Clerk, claimed to be abolished, (\$335.49 per month) and all other employes covered by the clerks' Agreement shall be compensated for all monetary loss sustained by reason of the Carrier's action as complained of in Part (a) of Statement of Claim.

EMPLOYEES' STATEMENT OF FACTS:

1. Prior to Tuesday, October 15, 1957, the Carrier's station employes at Grovetown, Georgia were as follows:

Agent: (Not covered by Clerks' Agreement)

Hours 7:00 A. M. to 3:00 P. M.

Rest Days: Saturday and Sunday. (Which rest days were filled by a relief employe also not covered by the Clerks' Agreement)

Telegraph Operator: (Not covered by Clerks' Agreement)

Hours: 3:00 P. M. to 11:00 P. M.

Rest Days: Sunday and Monday. (Which rest days were assigned to a relief operator, not covered by the Clerks' Agreement.)

Clerk: (Covered by the Clerks' Agreement)

Hours 8:00 A. M. to 5:00 P. M. (One Hour meal period)

Rest days: Saturday and Sunday, not covered by relief

This case is on all-fours with Awards 8063, 8064 and 8074.

For reasons given heretofore, Carrier respectfully requests that this claim be denied.

All data contained herein has been made available to Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 15, 1957, Carrier's station force at Grovetown, Georgia, consisted of an agent-operator, 7:00 A. M. to 3:00 P. M., an operator-clerk, 3:00 P. M. to 11:00 P. M., and a clerk, 8:00 A. M. to 5:00 P. M. Claimant occupied the clerk position. That position was abolished as of the completion of tour of duty on October 15, 1957, and the hours of the operator-clerk were changed to 10:00 A. M. to 6:00 P. M.

The Employees contend that in abolishing the clerk position and in changing the hours of operator-clerk, Carrier violated the scope and seniority rules of the Clerks' Agreement as well as Rule 40 (h) of that Agreement.

Carrier asserts that the abolishment of the clerk position "was due to declining revenues and consequent diminuation of the work load" and that "the small amount of clerk's duties remaining were distributed to the agent-operator and the operator-clerk." With respect to the change in hours of operator-clerk Carrier asserts that "Train schedules were such that there was no necessity for telegraph service after 6:00 P. M. but an operator was needed from 3:00 P. M. to 6:00 P. M." Carrier contends that the claim is improper under Article V, Section 1 (a) of the August 21, 1954 Agreement insofar as it is for "all other employees," that, with respect to the merits, the Employees did not have exclusive right to the clerical work and that on this property telegraphers have traditionally been assigned clerical duties to fill out their tours of duty.

This Division has frequently held that where, as here, the scope rule is general and does not specifically state the work, the right to the work must stem from historical practice and tradition. See Awards 10080, 10680, 10762. It is not disputed that prior to August, 1941, the station force at this station consisted of an agent-operator and a station porter. The Division has also held that a telegrapher may perform clerical work which is incidental to and in proximity to his regular duties to the extent necessary to fill out his assignment. See Awards 6269, 8793, 9329, 10680.

The Employees assert that after the abolishment of Claimant's position, a preponderance of the duties of that position remained to be performed and were performed, and that no exclusively telegraph duties were performed by the operator-clerk. In support of this view, the Employees refer to the joint check made on December 10, 1957 showing that from 10:00 A. M. to 4:30 P. M. the operator-clerk performed only clerk duties. The Employees also cite the overlap of hours of the two remaining positions except for the three hours from 3:00 P. M. to 6:00 P. M., and the fact that there was but one telegraph key at the station.

On consideration of the record as a whole, we cannot say that the evidence establishes the claim. Carrier's assertion that there was a significant decline in business, and the evidence with respect thereto, is not disputed. The joint check, referred to by the Employees, also showed that prior to October 16, 1957 the work of Claimant's position occupied about three hours and seventeen

minutes; and the record indicates that prior to the abolishment of that position, the operator-clerk performed clerical work. The fact that there was only one telegraph key at the station and that the joint check of the duties performed by the operator-clerk on December 10, 1957 did not show the performance of any exclusively telegraph duties does not furnish a sufficient basis for a conclusive finding that the operator-clerk was not required to perform such duties, especially since the record indicates that train order work was performed.

The difference in the evidence with respect to the factual situation alone indicates that Award 10743, cited in support of the claim, is not applicable here. In the cited case, the opinion states that:

"... It is agreed that at the time the above change was made, business at the Franklin station was increasing; that the abolished position of Clerk was a full-time job; and that the change effected by Carrier was not due to an ebb of clerical work. Carrier alleged that it took the complained of action for the purpose of promoting the efficiency of the station. The duties formerly performed by the Clerk were distributed between the positions of Agent-Telegrapher and said newly created position. It appears from the standpoint of time involved that approximately 90% of the work of the new Clerk-Telegrapher was clerical in nature."

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 evidence does not establish that the agreement was violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November 1963.