

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

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

**THE PITTSBURGH & WEST VIRGINIA
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4848) that:

(1) The Carrier violated the Current Clerks' Agreement beginning on March 1, 1960, when it nominally abolished position of Assistant Chief Clerk—Purchases at Rook, Pennsylvania and assigned the work thereof to an employe outside the Agreement.

(2) The position of Assistant Chief Clerk—Purchases at Rook, Pennsylvania shall be restored, bulletined and awarded as prescribed in the rules of the current Agreement.

(3) Mr. A. G. Drumm shall be compensated the difference in the established rate of pay of position of Assistant Chief Clerk—Purchases and that of his current assignment for each day on and after March 9, 1960 until such time as the violation of Agreement is corrected.

(4) Mr. McKelvey be compensated the difference in the established rate of Mr. Drumm's position and that of his (McKelvey's) current assignment for each day on and after March 9, 1960 until such time as the violation of Agreement is corrected.

(5) Mr. Myers shall be compensated the difference in the established rate of pay of Mr. McKelvey's position and that of his (Myers') current assignment for each day on and after March 9, 1960 until such time as the violation of Agreement is corrected.

(6) Mr. Knabanshue be compensated one day's pay at the established rate of Mr. Myers' position for each day on and after March 9, 1960 until such time as violation of Agreement is corrected.

The Purchasing Agent does not perform any Scope Rule activities. There remains the question—was there an appreciable amount of clerical work on the former position (Assistant Chief Clerk-Purchases), and (if so) what happened to it?

Firstly, the Carrier denies the conclusions sought to be established by affidavits signed by certain employees. The affidavits merely show that the Purchasing Agent had an assistant and that said assistant was a clerk. However, the work performed on the abolished position was delegated management functions which by ebb and flow returned to the Purchasing Agent. What little clerical work there was, was nowhere near four hours per day, nor was it anything except that which incidentally went with purchasing activities. Assuming, **without conceding**, that there was other clerical work which should be performed by regular clerks, it must be noted that the Organization did not prove on the property, and cannot here prove, that said work is now being performed by other than clerks. The burden of proof is on the Organization as the moving party—it has not met this burden.

The Organization has argued on the property that the abolishment of a position should be negotiated. This theory is in direct contravention of all Board decisions. The right to abolish, in the absence of limiting rule, remains always with the Carrier. The Organization cites no limiting rule—the Board is not empowered to write one. To recover financially, the Organization must show a penalty rule, real or implied, since Management retains all rights not bargained away. Liability cannot be inferred—it must be based on contract rules. No such rules are instanced here. At most, the Organization merely alleges that at other times in the past, management has deemed it expedient to confer with the Organization in the abolishment of positions. Certain points must be emphasized about the earlier incidents—(1) none of them involved the complete abolishment of a position and substantially all its duties; (2) conferences were held not to abolish positions but to dispose of work which remained to be performed; and (3) where the situation was other than (1) or (2), meetings were held in furtherance of employee relations and not contract relations.

The Organization has not shown that anyone, and certainly not anyone outside its ranks, is performing clerical work improperly. Without such showing, no claimant can recover.

The Carrier respectfully prays that the Claim should be dismissed.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1943, Carrier created a position of Assistant to the Purchasing Agent, filling the position by appointment. The duties of the position apparently required the occupant to assist the Superintendent of Shops and Purchasing Agent. In 1944, after negotiations, it was agreed that the position would no longer be excepted from the Clerks' Agreement. In 1945, the position was advertised with the duties listed as follows:

"DUTIES

To assist the Purchasing Agent in the purchasing of all materials and other incidental office work as it has been the practice heretofore, or the same work as has been performed by Stanley L. Simpson, who has entered the Armed Forces."

Thereafter, in 1953, the "official" position of Superintendent of Shops and Purchasing Agent was, in effect, divided into two (2) official positions, one being Assistant General Superintendent and the other being the Purchasing Agent. The Assistant Chief Clerk-Purchases continued as an Assistant to one such newly created position, that of Purchasing Agent.

In 1960, the incumbent Purchasing Agent died, leaving an official position vacant. The Assistant Chief Clerk-Purchases was promoted to this position. At the same time, Carrier abolished the position of Assistant Chief Clerk-Purchases, apparently deciding that the new Purchasing Agent needed no assistance in his duties.

The Brotherhood asserts that this attempted abolition of the Assistant Chief Clerk-Purchases position is a violation of the agreement. It contends that in fact, there has only been a transfer of clerical work from a covered employe to a non-covered official.

The Carrier contends that none of the work now being performed by the Purchasing Agent is clerical work but is only work of an official nature. They further contend that all clerical work is being performed by members of the clerical ranks and not by the Purchasing Agent.

Both parties have made assertions as to the nature of duties performed by the Purchasing Agent and by the Assistant Chief Clerk-Purchases. Further, the Brotherhood has presented evidence in the form of affidavits, intended to show that such duties are clerical in nature. In our opinion they have failed to show that such duties are of the type to which clerks have a demand right but are of a supervisory nature instead.

The Brotherhood further contends that the duties now being performed by the Purchasing Agent are identical to those formerly assigned to the Assistant Chief Clerk-Purchases, a position covered by the Clerks' Agreement.

However, this Board has held that the mere assignment of non-clerical work to a clerk does not prevent the Carrier from re-assigning to non-covered employees. As stated in Award 11466 (Moore):

"The Board holds that the assignment of duties does not bestow upon that position the right to perform these duties forever. The rights of the position are determined by the Scope Rule and by practice and custom."

We therefore hold that the abolishment of the Assistant Chief Clerk-Purchases position and the transfer of the duties formerly performed by such position, which were predominantly supervisory in nature, was not a violation of the agreement.

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 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1964.