

Award No. 13039

Docket No. CL-12919

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5087) that:

1. Carrier violated the Clerks' Agreement when effective with termination of assignment on November 11, 1960, it unilaterally discontinued the position of Car Clerk No. 173 at DeQuincy, Louisiana.

2. Carrier further violated the terms of the Clerks' Agreement when it assigned or permitted parties not under the Clerks' Agreement to perform the duties assigned to Car Clerk position No. 173.

3. Carrier shall restore the work of the abolished position to the Clerks' Agreement and Clerk Ruth Strong, who was the regularly assigned incumbent and who was improperly removed from Car Clerk position No. 173, shall be restored to such position and paid for all loss in wages from November 12, 1960 until Car Clerk position No. 173 is reinstated or such work assigned under the provisions of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: On November 18, 1960, Bulletin No. 21 was issued abolishing Car Clerk No. 173 effective with termination of assignment on November 11, 1960. Employees' Exhibit A.

On November 18, 1960, claim was filed on behalf of Mrs. Ruth Strong account the remaining duties of Car Clerk No. 173 were assigned to the Car Foreman and the duties did not materially decrease in volume justifying abolishing the position. Employees' Exhibit B, pages 1 and 2.

On December 19, 1960, Master Mechanic Mr. L. W. Martin declined our claim for the following reasons (Employees' Exhibit C) —

"Since there is not enough work remaining at DeQuincy Mechanical Department for a Car Clerk, your claim is respectfully declined."

We conclude that the Carrier could properly abolish the position of Round House Clerk, that the return of the remaining work of that position to the Round House Foreman and the Lead Car Inspector which was incidental to those positions was entirely proper, and that all remaining work of the abolished position which was assigned to the Yard Clerk in the Arkansas Seniority District constituted a violation of the Agreement."

In the instant case the discontinued Car Clerk position and clerical positions in the Master Mechanic's office at Houston are all in the same seniority district.

Award 5254 involved a claim on this property at the Carrier's Alexandria roundhouse facility, when, due to a strike, three roundhouse clerk positions were abolished and some of the remaining work was assigned to a foreman. The claim was denied and reference is made to Award 3211 mentioned above. The following language was contained in the Opinion of the Board:

"... It is an accepted principle that a foreman may properly perform clerical work incidental to his regularly assigned duties. Such work is treated as excluded from the Clerks' Agreement. When such clerical work becomes too burdensome, only employes under the Clerks' Agreement may perform it. We do not find that the 1928 Agreement altered this principle. It follows that when the work here involved diminished and the foreman could again absorb such clerical work incident to their positions, it was not a violation of the Clerks' Agreement for them to do so when no clerks were assigned to perform the work.

We must therefore conclude that the Scope Rule of the Clerks' Agreement was not violated when, during the times herein described, the clerical work was performed by foremen."

Award 4989 of this Division also supports the position of the Carrier with respect to the performance of clerical work by a foreman.

It is evident from the contention of the Employes in this case that it is their position the Carrier could never abolish a clerical position and permit any non-covered employe to perform even one single item of work that had been included in the work assignment of the clerk who had occupied such position without incurring liability for payment to such clerk, even though such work was incidental to the duties of the party performing it. Such a position is, clearly, not supported by but contrary to Rule 2 of the Agreement reproduced hereinabove.

In light of the circumstances here involved, together with the findings of your Board in Awards 3211 and 5254 which denied similar cases on this railroad, it is the position of Carrier that the claim here presented should likewise be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim stems from the abolishment of the position of Car Clerk No. 173 at DeQuincy, Louisiana, and the assignment of some of the duties thereof to a Car Foreman not covered by the applicable Agreement.

The record discloses that the bulletin announcing the abolishment stated there were no remaining duties to be assigned to anyone. After the claim was filed on November 18, 1960, and request made by the Employees for a joint check to determine the amount and nature of the remaining duties, the Carrier not only declined to participate in such joint check but on June 7, 1961, during progress of the claim on the property, admitted that after the job was discontinued there remained about three hours and fifty-five minutes of work which had formerly been performed by the Car Clerk. Some of this work, the Carrier said, was assigned to two car foremen and the rest to clerical positions in the Master Mechanic's office in Houston, Texas.

That a carrier may exercise freely its managerial right to abolish positions when justified by a substantial decrease in the work thereof and to make proper reassignment of the remaining duties, cannot be, and is not, questioned by the Employees. Under their Agreement in evidence here, however, certain rules must be complied with by the Carrier in reassigning the remaining duties of the abolished position, to-wit:

"RULE 52.

(b) Where the duties of a particular position materially decrease in volume justifying abolishing the position, the remaining duties will be reassigned in accordance with Rule 50."

"RULE 50.

(a) Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work; employees temporarily assigned to lower rated positions or work shall not have their rates reduced."

It is clear on the record that some covered clerical work remained to be performed after the Car Clerk's position was abolished and that within the period of November 12, 1960, to and including March 7, 1961, it was performed by employees not covered by the Clerks' Agreement. That Agreement contains the following rule:

"RULE 1.

(b) Positions referred to in this agreement belong to the employees covered thereby and no position shall be removed from this agreement except by agreement."

Work within Agreement coverage may not arbitrarily be removed and assigned to others not within its coverage, absent an agreement to do so by the parties. Nor does the amount of such work make any difference. As the Board said in Award 2387 (Referee Carter):

"The record indicates that the hectographing requires only one hour and twenty minutes time of an office boy each month. In any event, the work involved in the claim appears very small. That it was work within the scope of the Clerks' Agreement cannot be questioned. That the Carrier cannot farm this work, or any part of it, to a person not covered by the Clerks' Agreement without violating that Agreement has been decided by this Division on numerous occasions. See Awards 2005, 1808 and 1673. The fact that the amount

of work involved is small, or that no reduction of force resulted does not change the meaning of the Clerks' Agreement. The applicable schedule makes no exceptions in these respects. We can see where one assignment of a small amount of Clerks' work would cause no appreciable injury to the employees under the Clerks' Agreement. But the cumulative effect of a number of such assignments could well eliminate an otherwise required force increase or result in a reduction of force. The contract of the parties reserves all clerical work within the scope of the Clerks' Agreement to clerks unless there is a definite exclusion, whether or not it is large or small and whether or not it increases, decreases or maintains the force as before. There is no evidence tending to show that this work was within any recognized exclusion from the scope of the Clerks' Agreement as interpreted by this Division. The hectographing is clearly clerks' work under the Clerks' Agreement which cannot be properly assigned to one not under that Agreement."

The foregoing findings are deemed pertinent and controlling, and particularly so under the Agreement rules here applicable to the facts of this case.

The claim, therefore, will be sustained to the extent only that Claimant shall be paid for all loss in wages for the period of November 12, 1960, to and including March 7, 1961.

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 was violated.

AWARD

Claim sustained to extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1964.