

Award No. 13094
Docket No. CL-13194

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**

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5161) that:

(a) The Carrier violated the clerical Agreement when on September 9, 1960, it abolished the General Clerk position, rate \$401.88, at Keokuk, Iowa, and assigned clerical work to the Agent.

(b) The Carrier be instructed to return the clerical work to the Clerks at Keokuk, Iowa.

(c) Mr. R. C. Klein, Chief Clerk-Cashier, be paid eight (8) hours each work day, Monday through Friday, at the rate of \$432.71, plus any general increases, effective September 10, 1960, and until the violation has been corrected.

EMPLOYEES' STATEMENT OF FACTS: September 2, 1960, the following notice was issued to the General Clerk:

"Keokuk — September 2, 1960

Mr. Donald F. Frohard
General Clerk — Keokuk

Effective with your tour of duty Sept. 9, 1960, the position of General Clerk, Keokuk, Iowa, is abolished.

Cys - WFT
C. Walker, Des Moines
L. E. Sheldon

B. L. Schoech
Asst. Supt."

its Statement of Facts. The claimant lost his seniority as of April 10, 1961, and no claim for him could go beyond that date. Besides that the claimant was in no way injured. This force reduction did not throw him out of a job thereby giving some sort of basis for the 8 hours claimed per day. He could have worked plenty of places on the Rock Island, but elected not to—instead he elected to work for the Burlington, and did, for the period here involved. The record is clear that the claimant suffered no loss because of the job abolishment and is entitled to nothing.

We invite your attention to Item No. 4 of the Carrier's Statement of Facts where you will note the incumbent of the abolished position was Donald Frohardt. He was the one affected, but he exercised his seniority—suffered no loss, therefore, no claim is here for him. Yet, here is a claim for Klein whose job was not abolished simply because he did not exercise his seniority and even though he was neither eligible, available or suffered any loss.

Since it is apparent the Telegraphers' Organization might have an interest in this case, it seems appropriate and it is hereby requested that they be given third party notice of this dispute.

OPINION OF BOARD: This claim arose when, on September 10, 1960, Carrier abolished the position of General Clerk at Keokuk, Iowa. Part of the clerical duties which the General Clerk had previously performed were distributed to other clerks and part was assigned to the Supervisor Agent, who was titled "Agent-Telegrapher". The Agent-Telegrapher was not covered by the Clerks' Agreement and the Organization contends that such assignment to a non-covered employee violates the agreement.

The Organization asserts that Rule 1, Scope, has been violated. It also contends that Rules 25 and 69 were violated. These rules read as follows:

"RULE 25. REDUCING OR INCREASING FORCE

(a) When reducing forces seniority rights shall govern. Employees whose positions are abolished may exercise their seniority rights over junior employees. Other employees affected may exercise their seniority in the same manner. Employees displaced whose seniority entitles them to regular positions shall assert their rights within ten (10) days and may select a regular position on which to bump, bid for a regular or temporary position then under bulletin, or bump on a temporary assignment.

If bidding for or bumping on a temporary assignment they will have full bumping rights under Rule 37 when the temporary assignment has ended, that is, five (5) days to bump junior employee on either a regular or a temporary assignment.

(b) 1. In reduction of force of monthly rated employees on a seniority district, the Division Chairman will be furnished a copy of advance notice given to employees affected, such notice to the employees to be given as follows:

2. On seniority district where two or more offices are covered by same seniority roster, not less than 6 days' notice.

RULE 69. ADJUSTMENT OF RATES

Established positions will not be discontinued and new ones created under different titles covering relatively the same class of

work for the purpose of reducing the rate of pay or evading the application of these rules.

When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for that position will be properly adjusted.

NOTE: The word 'sufficient' is interpreted as meaning 'of such a degree as to justify an adjustment in the rate of pay.'

INTERPRETATION 2.

When discontinuing a monthly rated position, a statement will be furnished the Local and Division Chairmen as much in advance of abolishing a position as possible, indicating remaining work on the position and proposed distribution of such remaining work, it being understood that the remaining work will, so far as possible, be returned to the position or positions in the station, yard or office from which it originated.

If the Division Chairman agrees to distribution of the remaining work, he will so advise the employing officer. However, if a conference is requested by the Division Chairman regarding distribution of the remaining work, such conference will be held within the time limit provided for in Rule 25-b, unless another date is mutually agreed to between the employing officer and the Division Chairman. At the expiration of the period of notice the carrier may make the proposed changes, subject to the right of the committee to proceed as in the case of any other dispute."

The Organization asserts that the routine clerical work, here involved, historically belongs to clerks and that the agreement was violated when such work was assigned to the occupant of a newly created position under the Telegraphers' Agreement. It takes the position that the Agent-Telegrapher had never before performed the clerical work. They point out that the position was abolished in the 1930's and the remaining work ebbed back to the other clerical positions from whence it came, as was proper. The Organization seems to concede that a Telegrapher may be assigned clerical work to fill out their time when not occupied with telegraphy, which was found proper in Award 615. However, they contend that here the Agent-Telegrapher has never done any telegraphic work and that in fact there is no telegraph equipment in the office. They then argue that the Agent-Telegrapher, with no telegraph duties is not authorized to do purely clerical work. It cites Award No. 5 of Special Board of Adjustment No. 194 and Award 22 of Special Board of Adjustment No. 171 to the effect that clerical duties cannot be assigned to an agent who had not telegraphic duties. They also cite several awards of this Board to sustain their claim.

Carrier argues that the work involved does not belong exclusively to the clerks. It argues that such work can and has been traditionally assigned to agents throughout the system. It argues that said agent was authorized to perform clerical duties, but that when the vast majority of his time was spent in a supervisory capacity, his clerical duties flowed to the clerks. Upon a reduction of time required in a supervisory capacity, Carrier contends that the clerical work flowed back, and was rightfully assigned to the agent. Carrier cites numerous awards supporting its contention that agents and/or

telegraphers are authorized to perform incidental clerical work when not occupied with supervisory or telegraphic duties.

The Scope Rule involved is of the general type found in most Clerks' Agreements. The Organization has not attempted to show that the work involved was performed exclusively by the clerks throughout the system, but seem to limit their claim to exclusive performance here on this particular property. We are of the opinion that the type of work involved does not belong exclusively to clerks and that it is the type of work which is also performed by agents and/or telegraphers when they are not occupied with supervision or telegraph duties. We are also of the opinion that the doctrine of "flow and ebb" is applicable under the facts of the present case. For these reasons, we are of the opinion that the agreement has not been violated by Carrier.

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

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 23rd day of November 1964.