

Award No. 13773
Docket No. CL-13803

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5271) that:

1. Carrier violated and continues to violate the Clerks' Agreement and the Memorandum of Agreement between the parties dated April 19, 1960 when it abolished Position No. 190 at Seymour, Indiana and distributed the remaining work thereof between the Agent and Conductors, employees outside the Clerks' Agreement, and clerical employees at Bedford, Indiana.

2. Carrier shall be required to return the work assigned to the Agent and Conductors to the scope and application of the Clerks' Agreement and the employees covered thereby.

3. Francis E. Pickerrell shall now be compensated for eight (8) hours at the straight time rate of Position No. 190 for each Monday through Friday, retroactive sixty (60) days from December 7, 1961 and continuing each day Monday through Friday thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 24, 1961 the Carrier maintained a position of Clerk at Seymour, Indiana, identified as Position No. 190. Position No. 190 was assigned from 9:00 A. M. to 7:00 P. M., Monday through Friday, with Saturday and Sunday rest days.

The duties of Position No. 190 consisted of: yard checking, unloading and checking inbound freight, checking and loading outbound freight, way-billing of all outbound freight, preparing the 37 report, preparing interchange report and delivering the waybills to connecting lines. Employee Frances E. Pickerrell was the regularly assigned occupant of Position No. 190 which was the only remaining clerical position in effect at Seymour.

Position No. 190 at Seymour was, in accordance with the provisions of the "One Man Station Agreement" (Carrier's Exhibit "A") and the currently effective Clerks' Agreement, abolished effective March 24, 1961 with the remaining duties thereof being assigned to the Agent at Seymour and clerical forces at Bedford, Indiana which is in the same seniority district as Seymour, i.e., Seniority District No. 30.

Contrary to the employees erroneous contention in their Statement of Claim, no work remaining from abolished Position No. 190 was assigned or transferred to conductors.

There is attached as Carrier's Exhibit "B" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of March 30, 1962 and as Carrier's Exhibit "C" copy of letter written by Mr. Amour to Mr. Gilligan under date of October 15, 1962.

POSITION OF CARRIER: The Carrier submits that the abolishment of Position No. 190 at Seymour, Indiana and the assignment of the remaining duties thereof was entirely proper and in accordance with the provisions of the "One Man Station Agreement" (Carrier's Exhibit "A") and the currently effective Clerks' Agreement in view of which there is absolutely no basis for the instant claim and the Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose when the Carrier abolished a clerical position at Seymour, Indiana and transferred the work to the agent at Seymour and to clerical force at Bedford, Indiana.

The Organization contends the Memorandum of Agreement, dated April 19, 1960, so modifies the current agreement as to bar the divisibility of the duties of Position No. 190 outside of the station at Seymour, and to require that all of the duties formerly performed by the Clerk occupying position No. 190 must be assumed by the agent at Seymour, Indiana, provided however, that the said agent could perform those duties, in addition to his own duties, within his regular work hours, plus certain latitude set forth in the Memorandum of Agreement relating to overtime.

We find, in the instant case that the duties of Position No. 190 were partially assigned to the agent at Seymour, and partially to clerical forces at Bedford, Indiana, in violation of the agreement, and therefore the Claim must be sustained as to paragraph 1 of the Statement of Claim.

The Board has no authority to grant the relief prayed for in paragraph 2 of the Statement of Claim, and order the restoration of work or positions, and as to the said paragraph 2, we must perforce, deny the claim.

There is no evidence before the Board that Claimant Pickerrell has suffered an loss as a result of the abolishment of Position No. 190, and in the absence of such proof we cannot assess a penalty.

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 Agreement was violated.

AWARD

Claim sustained as to paragraph 1 of the Statement of Claim and denied as to paragraphs 2 and 3 of the Statement of Claim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary.

Dated at Chicago, Illinois, this 29th day of July 1965.

LABOR MEMBER'S DISSENT TO AWARD NO. 13773, DOCKET CL-13803

The Referee erred in his Opinion and Award for the reasons outlined below:

Reason No. 1

Part 1 of our Statement of Claim reads as follows:

"Carrier violated and continues to violate the Clerks' Agreement and the Memorandum of Agreement between the parties dated April 19, 1960 when it abolished Position No. 190 at Seymour, Indiana and distributed the remaining work thereof between the Agent and Conductors, employees outside the Clerks' Agreement, and clerical employees at Bedford, Indiana."

Item 2 of the April 19, 1960 Agreement referred to in the Opinion reads in part as follows:

"With the actual abolishment of a clerk's position, as provided above, such work, as writing and calculating incident to keeping records and accounts, * * * or other duties normally performed by employees covered by the Clerks Agreement may be assigned to the station agent only at the station — it being the intent that the agent shall perform such work within his regularly assigned hours. * * *"
(Emphasis supplied)

The record is quite clear that not only did the Conductors perform clerical work, but a considerable amount of the work was transferred to Seymour, Indiana; and, attention is directed to the third paragraph of the Opinion which reads:

"We find, in the instant case that the duties of Position No. 190 were partially assigned to the agent at Seymour, and partially to

clerical forces at Bedford, Indiana, in violation of the agreement, and therefore the Claim must be sustained as to paragraph 1 of the Statement of Claim."

The rule is quite clear that the remaining clerical work can only be performed at the station at which the abolished position existed, and then only by the Agent at that particular station.

Reason No. 2

Part 2 of our Statement of Claim reads:

"Carrier shall be required to return the work assigned to the Agent and Conductors to the scope and application of the Clerks' Agreement and the employees covered thereby."

The fourth paragraph of the Opinion reads as follows:

"The Board has no authority to grant the relief prayed for in paragraph 2 of the Statement of Claim, and order the restoration of work or positions, and as to the said paragraph 2, we must perforce, deny the claim."

No place in the record has the employees indicated that the abolished position be restored. We have, however, insisted that the work that was removed in violation of our agreement be restored to the employees within the scope of our agreement and this Division has ruled on this issue in many recent awards, such as Awards Nos. 12422, 12822, 12959, 12960 and 13190, to mention just a few.

The Carrier's Submission, Rebuttal, and Carrier Member's oral argument were void of any comment pertaining to the restoration of the position. It apparently came to the Referee in a dream.

Reason No. 3

The third paragraph of the Opinion reads in part as follows:

"We find * * * the Claim must be sustained as to paragraph 1 of the Statement of Claim."

and the fifth paragraph reads:

"There is no evidence before the Board that Claimant Pickerrell has suffered any loss as a result of the abolishment of Position No. 190, and in the absence of such proof we cannot assess a penalty."

Finally, the Award reads "Claim sustained as to paragraph 1 of the Statement of Claim and denied as to paragraphs 2 and 3 of the Statement of Claim."

To call this a **nothing** award would be enlarging on it; it is much more vicious and damaging than a nothing award — it is a deceitful award.

If it were the Referee's intention to give the Carrier carte blanche to violate the agreement at will, without any degree of penalty to prevent it, I believe he has accomplished his purpose.

The Employes endeavored to prevail upon the Referee to modify his ridiculous decision, but this he refused. The Employe Representative also endeavored to persuade the Referee, at the adoption session, to refrain from voting for the adoption of this award, which would allow the docket to be assigned to a subsequent Referee, if, as he contended, he was so right in his decision; he again declined the request.

For the above reasons, we vigorously dissent to this Award.

/s/ C. E. KIEF
C. E. Kief, Labor Member
August 6, 1965