



Award No. 14827
Docket No. CL-13734

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5276) that:

1. The Carrier violated rules of the currently effective Clerical Agreement dated November 1, 1952, when effective with the close of business December 17, 1961, the position known as Station Clerk at Raleigh Freight Station, Raleigh, N. C., was abolished and the work normally attached to the position of Station Clerk, a position coming within the scope of the Clerk's Agreement was unilaterally assigned to employees not covered thereby.

2. The Carrier shall now be required to restore the work normally attached to the position of Station Clerk as it existed prior to December 18, 1961, to employees covered by the scope rule of the parties agreement.

3. The Carrier shall now be required to compensate Aaron Cole for a days pay at the rate of Station Clerk position at Raleigh Freight Station for December 18, 1961 and each work day in the work week Monday through Friday thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: At the close of business on December 17, 1961, the position of station clerk at Raleigh Freight Station was abolished and 80 per cent of the work was turned over to the Agent an employe not covered by the Clerical Agreement and the other 20 per cent of the work was turned over the the Assistant Agent an employe partly covered by the Clerical Agreement.

It was the daily assignment of the Station Clerk to perform the following duties:

1. Handled all cashier's work
2. Taken care of all demurrage records
3. Billed all demurrage charges

Dear Mr. Cobean:

I have received your letter of September 4, 1962 concerning claim of Aaron Cole. You state in your letter the claim was filed April 24, 1962. The claim in writing was filed with me April 24, 1962. Prior to this date, you came to my office and requested that I have an investigation made of the situation and later confer with you. Investigation was begun and was completed May 16, 1962 on which date I wrote you a letter giving you the results of the investigation and suggested time and place for conference.

We conferred on June 5, 1962, discussed the matter at length, and I told you that I would not be able to allow the claim. By letter dated June 22, 1962, I confirmed the fact in writing that we were unable to reach an agreement, or in other words, I would not allow the claim. The words, "This claim is hereby disallowed," were not used in my letter of June 22, but the meaning was clear in view of our conference.

I have fully complied with the rule quoted in your letter of September 4. Your claim was disallowed, and I informed you of this in writing by letter dated June 22, 1962.

Yours very truly,

/s/ C. J. Collins
General Counsel"

OPINION OF BOARD: On September 15, 1961, Carrier moved the general offices of Norfolk Southern Railway Company from Norfolk, Virginia to Raleigh, North Carolina. At the close of the business day, December 17, 1961 it abolished the position of Station Clerk at Raleigh Freight Station. The remaining duties of the abolished position were assigned to the Agent, the Assistant Agent and to a Clerk.

Organization makes claim on behalf of Aaron Cole, Clerk of the abolished position at Raleigh Freight Station that Carrier improperly assigned 80% of the work of that position to the Agent, an employee not covered by the Clerks' Agreement. It also argues that the claim be allowed since Carrier did not comply with the provisions of Article V of the National Agreement of August 24, 1954, because it failed to present in writing the reason for the disallowance of the claim required by paragraph 1(c) applicable to subsequent appeals and declinations.

With reference to the issue of Carrier's failure to give a reason for declination of the claim, we review the pertinent correspondence between the parties. The record shows that on March 16, 1962, Carrier responded to the claim initially filed by Organization, on January 30, 1962. In this letter, Carrier stated, "We do not feel that there has been any violation of Rule 1 of the Clerks' Agreement." In response to Organization's appeal to the General Counsel on April 24, 1962, that official replied in a letter dated May 16, 1962, that he did not believe there was a violation of the Scope Rule of the Clerks' Agreement because Mr. Hudson, the Agent not covered by the Clerks' Agreement, assumed only three hours of the work formerly performed by Mr. Cole, and that the remainder of the work was performed by employees covered by the Clerks' Organization. He also expressed a willingness to confer with Organization concerning this dispute on June 5. On June 22, 1962, the General Counsel wrote another letter to Organization in which he referred to the con-

ference held on June 5, and stated: "This letter confirms the fact that we were unable to reach any agreement concerning this matter." In response to a letter of September 4, 1962, sent by the General Chairman, in which he stated that Carrier failed to comply with the August 24, 1954 Agreement by not presenting in writing the reasons for the disallowance of the claim, the General Counsel on September 10, 1962 wrote "By letter dated June 22, 1962, I confirmed the fact in writing that we were unable to reach an agreement, or in other words I would not allow the claim."

This correspondence is evidence that Carrier presented its reasons in writing for the declination of the claim. The letter of June 22, 1962 has reference to the letter of May 16, 1962, wherein Carrier set forth its reasons and suggested a conference on June 5, 1962. We therefore hold that Article V was complied with.

On the merits of the case the central issue is whether Carrier violated the Scope of the Agreement, particularly paragraph 2, which is different from most Scope rules, and reads as follows:

"Clerical work occurring in a spread of eight (8) hours will not be assigned to more than one position not classified as a clerk for the purpose of keeping the time devoted to such work by any one employee below four (4) hours per day."

Because of business conditions Carrier abolished the position of Station Clerk at the Raleigh Freight Station. This abolishment was within its managerial prerogatives. The record discloses that some of the work was eliminated and the remainder was distributed among the Agent, Assistant Agent, and Clerk. Although Organization presents a list of the duties that it maintains were formerly performed by the Station Clerk it fails to support its allegation that 80% of the work of the abolished position was turned over to the Agent. In fact Organization's Exhibit K indicates that the Agent's duties transferred from the abolished position required an average of three (3) hours daily of his time. Since the Agent performed less than four (4) hours of clerical work per day from the abolished position the Scope Rule provisions of this particular Agreement were not violated. The claim therefore is denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of October 1966.

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