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AWARD NO. 24
NRAB DOCKET NO. CL-8535
CASE NO. 24
SSW FILE R-51-1057
BRC FILE 21-10

SPECIAL BOARD OF ADJUSTMENT NO. 169

PARTIES } The Brotherhood of Railway and Steamship Clerks
TO }
DISPUTE } St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Carrier violated the Clerks' current Agreement when, on April 15, 1952, it abolished the position of Freight Claim Adjuster, Office of General Freight Claim Agent, Tyler, Texas, occupied by J. F. McDonough, and distributed the work among other positions, one official position, other Freight Claim Adjuster positions and one position with lesser pay than that of Freight Claim Adjuster.

(2) That Mr. J. F. McDonough be reimbursed for the difference between the salary paid him after April 15, 1952, and the salary he would have been paid had the position not been improperly abolished April 15, 1952, until the violation is corrected.

(3) That the position of Freight Claim Adjuster be reestablished and the road work now being performed by the Assistant General Freight Claim Agent, formerly performed by the Freight Claim Adjusters, and the office work now being done by lower daily rated employees be returned thereto.

FINDINGS: Claimant J. F. McDonough was a Freight Claim Adjuster in the office of the General Freight Claim Agent and had been a freight claim adjuster for more than thirty years prior to the institution of this claim. On April 15, 1952, his job was abolished and a great part of the work previously performed by claimant was transferred to other employees in the Freight Claim office. The Carrier has stated that there were three other freight claim adjusters in the office and that the work required of the freight claim adjusters had decreased to the point to where three men could do the work that had required four previously. If that were all that were involved we would have little difficulty with this claim, because it is recognized that where the work in an office decreases where less men are needed, Carrier has the right to abolish jobs and assign the work to other employees in the same office in accordance with the agreement.

This case is burdened with the fact that on April 1, 1952, just fifteen days prior to the date claimant's job was abolished, a position of Assistant General Freight Claim Agent was established, which was an official position, a part of the duties of which required the newly created Assistant General Freight Claim Agent to travel, investigate and settle claims out on the property, which claimant avers was work that had been performed by him for over thirty years, and claim is made that a part of the duties of the freight claim adjuster, whose position was abolished, were taken over by this official not under the scope of the Agreement and that it was violative of the Clerks' Agreement to assign that part of the freight claim adjuster's duties to an official.

The facts develop that the majority of the work of the freight claim adjusters is office work in handling and settling claims by correspondence, but that upon occasions through the years freight claim adjusters have been required to travel out over the property and contact shippers and consignees, particularly to dispose of claims that they have been unable to dispose of by correspondence. Other duties are required of them also on the road, such as attending fires and wrecks and assisting in the disposition of damaged freight and the settlement of claims growing out of such fires and wrecks. Freight claim adjusters are recognized on the property as being employees who are regularly required to travel. There is considerable dispute about the question of how much travel work was being required of freight claim adjusters at the time the job was abolished; also how much time was devoted by officials in the department to traveling, investigating and settling claims out on the property, although it is clear that as far back as we have any record of the situation the General Freight Claim Agent, the Freight Claim Agent, the Assistant Freight Claim Agent and Chief Clerk in the department on occasions went out and did traveling, investigated and adjusted claims that could not be disposed of by correspondence in the office. So the picture we have here is that everybody in the office from General Freight Claim Agent down to the Freight Claim Adjusters were on occasions required to do this work.

Effective April 1, 1952, when the newly created position of Assistant General Freight Claim Agent was created and Mr. Garrett appointed to that position, his position consisted of many duties which required travel in connection with adjusting claims, such as contacting shippers and arranging for methods for disposing of future claims by correspondence in the office, claim prevention work, contacts with railroad committees set up to constantly study the claims problem, and to attempt to reduce the origin of claims to a minimum. He was also required to and did investigate and settle individual claims. The type of work required of the newly created position of Assistant General Freight Claim Agent was work that had always been required of officials throughout the past years. The difference here is more in degree of the work performed than in the act of performing the type of work that had always been performed by officials in the Freight Claim office. It may be that the newly created official did more traveling in the settlement of individual claims than any other official in the office had performed, but that goes only to the degree rather than to the factual situation. It seems that the work Garrett did was work that had always been performed by officials in the office. It is significant to note that freight claim adjusters' work is largely office work and consists of handling claims and disposing of same by correspondence, but that when it became necessary they were subject to being assigned out on individual assignments by the General Freight Claim Agent to investigate individual claims on the property. Therefore, taking the whole picture as a whole, we are driven to the conclusion that road work, investigating and disposing of claims, was work that was recognized as not being exclusive work of the freight claim adjusters but only on occasions when assigned out by the General Freight Claim Agent and that officials were assigned out in the same manner to perform this same work. It is not violative of the agreement for an official to make such investigations.

Award No. 24

We believe that under all the facts and circumstances in this case that requiring the Assistant General Freight Claim Agent to take over more of this work than probably had previously been performed by officials in the office was not an invasion of the rights of the Clerks' Agreement and that we would be in error to hold that it was the exclusive work of the freight claim adjusters.

AWARD: Claim denied.

/s/ Frank P. Douglass
Frank P. Douglass, Chairman

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member
(Dissent attached)

/s/ L. C. Albert
L. C. Albert, Carrier Member

Tyler, Texas
April 9, 1957.

EMPLOYEE MEMBER'S DISSENT TO AWARD NO. 24

The Award states:

"On April 15, 1952, his job was abolished and a great part of the work previously performed by claimant was transferred to other employees in the Freight Claim office."

The Employees showed that ten days after the abolishment of Claimant's position, Assistant General Freight Claim Agent B. B. Garrett took over working of wrecks and investigation and adjustment of claims, which work had previously been performed by Claimant; on July 16, 1952, three months after the abolishment and redistribution of the work, Freight Claim Adjusters Pierce and Curry were given instructions to work Saturday, July 19, 1952, on accumulated claims; on November 14, 1952, Carrier approached the Organization with a proposal to establish an Exception B position in the Freight Claim Department; and on January 1, 1953, Carrier established a new position of Claim Clerk. All of these facts indicated that the duties of the abolished position still remained, and that Carrier violated the Agreement in abolishing Claimant's position, which is evidenced by the following from Award 607:

"There is no authority whatever under the Agreement itself for the discontinuance of a position having full eight hours of duties and reassignment of such duties to others. Such a practice would completely nullify the Wage Agreements."

The Third paragraph of the Award states:

"Other duties are required of them (Freight Claim Adjusters) also on the road, such as attending fires and wrecks and assisting in the disposition of damaged freight and the settlement of claims growing out of such fires and wrecks. *** although it is clear that as far back as we have any record of the situation the General Freight Claim Agent, the Freight Claim Agent, the Assistant Freight Claim Agent and Chief Clerk in the department on occasions went out and did traveling, investigated and adjusted claims that could not be disposed of by correspondence in the office."

The above statement regarding officials performing work of the Freight Claim Adjusters prior to the abolishment of Claimant's position on April 15, 1952, was never clearly substantiated by Carrier. During the course of the hearing Freight Claim Adjuster J. R. Pierce testified he and Claimant J. F. McDonough had traveled and performed the duties of Freight Claim Adjusters for more than thirty years, and that it was a rare occasion when an official or the Chief Clerk of the Freight Claim Department performed the work assigned by bulletin to the Freight Claim Adjusters. General Freight Claim Agent J. T. Gallaspy and Freight Claim Agent R. H. Lewis testified they had adjusted some claims out of the office, but were vague and indefinite concerning how often such trips were made. Carrier made reference to trips made by officials, but did not specify how many of the trips pertained to adjustment of claims, and how many of the trips pertained to meetings which the officials found necessary to attend.

Employee Member's Dissent to Award 24

The fourth paragraph of the Award states:

"He was also required to and did investigate and settle individual claims. *** it may be that the newly created official did more traveling in the settlement of individual claims than any other official in the office had performed, but that goes only to the degree rather than to the factual situation."

The Employees showed on pages 6, 7 and 8 of their Submission that from April 25, 1952, through December, 1952, Mr. B. B. Garrett went to various wrecks and fires and made adjustments on numerous claims, which work had previously been performed by the Freight Claim Adjusters. The dates shown were not all-inclusive, but merely illustrative. During the course of the hearing the Board was shown evidence that Mr. Garrett traveled all over the property adjusting claims as small as \$10.00. In answer to a direct question during the course of the hearing, Mr. Garrett did not deny that some of the work he was doing would have been performed by the Freight Claim Adjusters if his position (Mr. Garrett's) had never been created.

The fourth paragraph of the Award further states:

"It is significant to note that freight claim adjusters' work is largely office work and consists of handling claims and disposing of same by correspondence, but that when it became necessary they were subject to being assigned out on individual assignments by the General Freight Claim Agent to investigate individual claims on the property."

Carrier's Exhibit No. 8 reproduced Mr. J. T. Gallaspy's Advertisement No. 11 of October 14, 1947, outlining the duties of a Freight Claim Adjuster as follows:

"Duties: Investigate and make adjustment of claims for loss and damage and handle all correspondence in connection therewith, contacting Claimants and others when necessary. Handle Prevention matters and work requiring traveling on assignment of General Freight Claim Agent."

Mr. J. R. Pierce testified that he and Claimant J. F. McDonough performed the above described duties for more than thirty years until the position of Assistant General Freight Claim Agent was created on April 1, 1952, shortly after which the necessary traveling of their positions was taken over by Mr. B. B. Garrett.

The Employees pointed out to the Board that no Clerical Employee travels unless instructed by his superior to do so, and, for that reason, the words on the Advertisement reading: "traveling on assignment of General Freight Claim Agent" did not create a different situation than in other departments where clerical employees were required to travel.

The Employees made reference to Memorandum of Agreement dated January 5, 1950, Section 2 of which provides that the occupants of three Freight Claim Adjuster positions at Tyler were regularly assigned to travel. Carrier thus agreed that the Freight Claim Adjusters traveled with regularity.

Employee Member's Dissent to Award 24

Carrier substantiated our position that the Freight Claim Adjusters traveled with regularity by stating on page 6 of its Submission:

"The records indicate that during the 12 month period immediately prior to the time the position was abolished Mr. McDonough made only 22 trips, or an average of less than two trips a month. The other freight claim adjuster (Pierce) who performed most of the other traveling, made only 19 trips during the same period."

Carrier failed to detail the number of days each trip consumed, but during the hearing Mr. J. R. Pierce testified a trip lasted from one day to an entire week.

The fourth paragraph of the Award further states:

"Therefore, taking the picture as a whole, we are driven to the conclusion that road work, investigating and disposing of claims, was work that was recognized as not being exclusive work of the freight claim adjusters but only on occasions when assigned out by the General Freight Claim Agent and that officials were assigned out in the same manner to perform this same work."

In its Submission and Briefs and the testimony of officials of the Freight Claim Department, Carrier did not detail one specific instance where an official performed work of the Freight Claim Adjusters, except Mr. B. B. Garrett, whose activities resulted in our claim.

We substantiated our claim by reference to National Railroad Adjustment Board, Third Division, Award 6670, which held:

"We have frequently held in our awards under like Scope Rules that the work reserved to employees covered thereby is that which has been traditionally performed by the classifications of employees listed therein."

"It is contended on behalf of this Carrier that in order to prevail in this instance that the employees must show that all loading and unloading of grain doors had been exclusively handled by the employees in Group 3 of the Clerks' Agreement. We cannot agree with that contention. The commodity handled, so long as it is company freight or handled for the Carrier's account, is of no material significance. It is the work of loading and unloading which is involved and of importance."

From Award 5579:

"The fact that the services involved are not reserved exclusively to clerks under the Scope Rule does not justify the assignment of such duties on rest days to employees of another craft or class in violation of those specific rules."

Employee Member's Dissent to Award 24

From Award 7427:

"Carrier would distinguish Awards 5622, 5623 and 5772 from this case on the basis that the conclusions on those cases were reached by reason of the EXCLUSIVE assignment of the work involved to clerks for five days per week. In this case, the Carrier argues, the assignment was not exclusive because of the occasions on which, for the sake of convenience, the agent-telegrapher did this kind of work during Claimant's regular assignment. However, we do not think that the use of the phrase 'exclusively assigned' in those cases has the restricted meaning which Carrier would give to it; namely, that the clerk did every bit of the work. Rather, we think the meaning intended was that the work was regularly, ordinarily and customarily accomplished by the clerks as part of the regular duties of their assignments - a state of facts which is admitted to be so in this case. We think that the work in question was 'exclusively' assigned to Claimant within the meaning of that phrase as used in Awards Nos. 5622, 5623 and 5772 and that the principles and findings of those awards, involving the same parties as here, require that the claim be sustained in this case. We think it is not inconsistent to hold that an agent-telegrapher may perform certain occasional clerical work as a matter of convenience during the clerk's regular assignment, but that such work may not be assigned entirely to the telegrapher in lieu of calling a clerk on the rest day of the Clerk's position."

From Award 1673:

"This Board has consistently held that it is a violation of the Clerks' collective Agreement to assign work within the scope of the agreement to employees holding excepted positions. See Awards 637, 521, 523, 631, 731, 751, 753, 754, 1209, 1254, 1300, and 1404. Nor may the Carrier arbitrarily take work which is under the current agreement and assign it to an excepted position. Such a prerogative would be destructive of the agreement. See Awards 631, 637, 736, and 751."

For all of the reasons stated above, I vigorously dissent from a seriously erroneous conclusion by the Board in this Award.

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member.