

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim for restoration of position of Cashier, rate \$132.00 per month, Ottumwa, Iowa, to the provisions of Clerks' Working Rules Agreement and compensation for monetary loss sustained by all employees affected account position assigned to telegraph operator and transferred to the provisions of the Telegraphers' working rules agreement effective December 1st, 1936."

EMPLOYES' STATEMENT OF FACTS: "As of November 30th, 1936, the force in the office of Local Freight Agent at Ottumwa, Iowa, was:

Title	Rate	Assigned Hours
Chief Clerk,	\$137.00 per month,	8:00 A.M.-12 Noon —1:00 P.M.-5:00 P.M.
Cashier,	132.00 " "	8:00 A.M.-12 Noon —1:00 P.M.-5:00 P.M.
Rate Clerk,	124.50 " "	8:00 A.M.-12:30 P.M.—1:30 P.M.-5:00 P.M.
Car Clerk,	117.00 " "	8:00 A.M.-12 Noon —1:00 P.M.-5:00 P.M.
Telegraph Operator,	.65 " hour,	8:00 A.M.-12 Noon —1:00 P.M.-5:00 P.M.

"Effective December 1st, 1936, all of the duties formerly performed by the position of Cashier, rate \$132.00 per month, under the provisions of Clerks' Working Rules Agreement, were assigned to the telegraph operator, rate 65¢ per hour. The position of Cashier at Ottumwa was under the provisions of the Clerks' Working Rules Agreement. The rate of pay of \$132.00 per month on this position is the result of direct negotiations between the carrier and representatives of the employees. The telegraph operator devotes not less than six hours per day and on some days as much as seven hours and fifteen minutes to performing work formerly assigned to the position of Cashier, which consists of:

Writing up all abstracts, inbound and outbound.
Writing up cash sheets.
Preparing 1740 Report.
Preparing 54 Report.
Make all window collections.
Make up remittance daily.
Handle all relief claims.
Handle all Government bills of lading.
Recap abstracts at the end of the month.
Make up balance sheet.
Make up Uncollected Report.
Handle correspondence incident to duties of Cashier."

telegraphers. For a period of as long a time as telegraphers have been used on this railroad, holders of telegraphic positions so classed have been required to perform clerical work and without regard to the amount of such clerical work and therefore such clerical work has become a part of the regular recognized work of telegraphers. We can not emphasize too strongly to your Board the fact that for at least the duration of the agreements with this Carrier and its telegraph employees, extending back for 34 years, it has been understood by the telegraphers that they would perform clerical work in such amounts or quantities as was required of them when it could be performed by them during their regularly assigned hours; and we also emphasize the fact that such a practice was known to the clerks on this property before there was an organization representing that class of employees, and the practice has been known to and recognized by these employees as well as their representatives since an organization has been in existence and a contract covering clerical employees has been effective on this property. The practice of telegraphers and agents performing clerical work, even to the extent of performing work formerly performed by employees in clerical positions later discontinued, is so well established that it has become a completely recognized rule, binding upon both the clerks and telegraphers, as binding as other rules which have been expressly written into the schedules of these employees. The Clerks' Organization has known of, recognized and concurred in the right asserted by the Carrier of having clerical work performed by telegraphers and agents where telegraphic and agency forces were maintained for required supervision, agency work or telegraphing.

"From the above analysis of this claim it is clear that there is no authority in the current Clerks' Agreement on which your Board can predicate an award directing this Carrier to re-establish a position of Cashier at Ottumwa, nor is there any authority for requiring the Carrier to pay other clerical employees other than the rate of pay which has been specified and agreed to as being properly applicable to the positions which they have occupied since December 1, 1936. If an award should be made denying the Carrier the right to handle its station work as is being done at Ottumwa, this will be equivalent to writing a new rule into the Clerical Schedule, which would say, in substance, that the Clerical Schedule applies to any and all employees of the Carrier and that only clerical employees covered by the Clerks' Agreement can perform clerical work.

"Such action, of course, cannot be taken because the Railway Labor Act gives your Board only the power of declaring obligations created by the contracts which have been negotiated between the Carrier and its employees. The obligations must be created by the contracts. Nowhere in that Act is there any authority for adding to or taking from, or for changing the language of a negotiated rule, or for adding new rules; and, therefore, your award must necessarily deny the claim of the employees, because to do otherwise would require your adding rules to the negotiated agreement."

OPINION OF BOARD: This case involves the general question of the right of a carrier to assign clerical work to telegraphers, which general subject was considered at length in the cases covered by Award Nos. 615, 635, and 636.

The conclusion reached in those cases, stated briefly, was that in the light of the well established and known historical relation between the Clerks' and the Telegraphers' agreements there must be deemed to be a limitation on the right of the Clerks to the exclusive performance of clerical work, consisting in the right of the carrier to assign some of such work to telegraphers to fill out their idle time.

The Organization contends in this case, however, that regardless of the general application of the principles there recognized, they are not applicable under the particular Clerks' Agreement in force on this carrier; at least, not to the extent of legalizing what was done in the instant case.

In support of this contention, they rely on subdivision (j) of Rule 1 and Rule 69 and joint interpretation thereof, quoted in the statement of their position.

It will be convenient to dispose of these questions in reverse order.

The carrier unquestionably violated Rule 69 and its joint interpretation in discontinuing a full time position and reassigning the duties without conference. In this respect there is no difference in principle between this case and the group dealt with in Award No. 607 and several succeeding awards involving this rule; and the Board must, in these conditions, sustain the claim here made, on that account.

But as that action will not dispose of the controversy, but merely transfer it back to conference, it becomes necessary to dispose of the other question, i. e., the effect of Rule 1 (j).

The evidence is quite clear that this section was added to the Clerks' Agreement in the revision effective January 1, 1931, for the express purpose of preventing the unilateral removal by the carrier of positions from the Clerks' to the Telegraphers' Agreement. The carrier admits this but insists that it applies to "positions" only, not the "work" thereof. The Clerks insist there is no difference between "positions" and the "work" thereof. While the Board is unable to agree that these terms, as here used, are synonymous, it is its view that under this rule the carrier cannot abolish a full time clerical job and turn all the work over to a telegrapher because the substance of that action is precisely what is prohibited by the rule. This situation is very similar to that involved in Award No. 615, where the carrier was sustained in turning over more than 7½ hours per day of clerical work to a telegrapher, but there was no such rule as this involved there, and this one does operate to prohibit such a result. It does not operate as far as the Clerks contend, i. e., to prohibit the removal of any work once subject to the agreement to the telegraphers; as regards that, the Rock Island agreement, in the interpretation we place upon it, is not different from the general interpretation involved in Award No. 615. In other words, the situation is not different, so far as the Rock Island is concerned, from what it is generally, insofar as concerns the assignment of clerical work to telegraphers in normal course on the rearrangement of work or abolition of positions, but it does not permit of the abolition of a full time clerical position and the turning over of its work to a telegrapher.

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 employes involved in this dispute are respectively carrier and employes 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 carrier violated Rules 1 (j) and 69 and joint interpretation thereof.

AWARD

Claim sustained for reinstatement of position and reparation for wage losses to affected employes.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of May, 1938.