

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that Carrier violated the rules of the Clerks' Agreement when, on May 9, 1938, it abolished position of Station Clerk, National City, California, hours of assignment 10:00 A. M. to 7:00 P. M., one hour meal period, daily rate of pay \$4.77 and assigned the duties of said position to an employe not covered by the rules of the Clerks' Agreement, an Apprentice Operator; and

(2) Claim that Mrs. Blanche P. Jerauld shall be compensated in full for monetary loss resulting from Carrier's action.

EMPLOYEES' STATEMENT OF FACTS: Effective May 9th, 1938 position of Station Clerk, National City, California was abolished and the duties of said position, hereinafter enumerated, were assigned to an apprentice-operator (Clifford E. Edwards) who was transferred from Vista to National City on that date.

The duties assigned to the Apprentice Operator were:

- Checking the yards.
- Making 88, 89 and 44 Reports.
- Checking rates on inbound and outbound freight shipments.
- Making freight bills.
- Handling demurrage and interchange records and reports.
- Making 1301 Report.
- Making all pick-up and delivery reports.
- Answering the phone, quoting passenger rates, giving consignees notice of arrival of freight shipments, and other miscellaneous clerical and related duties.

Prior to May 9, 1938 the station force at National City consisted of the following:

- Agent-Operator assigned 8:00 A. M. to 5:00 P. M., rate 78¢ per hour.
- Station Clerk assigned 10:00 A. M. to 7:00 P. M., rate \$4.77 per day.

On and after May 9, 1938 the force consisted of the following:

- Agent-Operator assigned 8:00 A. M. to 5:00 P. M., rate 78¢ per hour.
- Apprentice Operator assigned 10:00 A. M. to 7:00 P. M., rate \$60.00 per month.

tion 15 of the current Agreement and those of the Railway Labor Act. No request for such a rule has ever been submitted by the Employees or their organization, in the absence of which it is evident the instant claim has no support under the current Clerks' Agreement.

Several considerations warrant the complete denial of the Employees' claim in this dispute, namely:

(1) The employment and use of the telegraph apprentice at National City was in accordance with the long established practice of the Carrier, which has been and is known to the employees and their representatives involved in this dispute.

(2) The agreement between the Carrier and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees specifically excludes telegraph apprentices from its application, and said agreement does not otherwise prohibit nor restrict in any manner the employment and use of telegraph apprentices.

(3) The employment and use of telegraph apprentices is in accordance with an agreement and understanding between the Carrier and The Order of Railroad Telegraphers, and the employment and use of the telegraph apprentice at National City was in accordance therewith.

OPINION OF BOARD: During the period from May 9, 1938, to June 16, 1938, the position of Station Clerk at National City, California, was abolished. During this interim, a telegraph apprentice was assigned to this station.

It is the contention of the petitioner that the work formerly done by the Station Clerk was performed by this apprentice, who was not covered by the rules of the Clerks' Agreement. On the other hand, the Carrier contends that the work formerly performed by the Clerk was absorbed by the Agent.

Thus, we have a dispute of facts in this claim. The Board attaches no great significance to the fact that two hours and thirty minutes of time was required to deliver Western Union telegrams, which was done by the Claimant during this period of time by a special agreement between the Agent and Claimant, who happened to be husband and wife. However, the Carrier does admit that this apprentice did do one hour and thirty-five minutes per day of the Station Clerk's duties. Moreover, the Board believes that the letter written by Superintendent Wilson on June 16, 1938, to Division Chairman Rickett was a strong inference that this clerical work was performed by the apprentice. In this letter, he said:

"Have made a study of the work being performed by the apprentice operator, and do not find there is any need at all for the apprentice operator performing any of the higher rated work that was done by the Station Clerk * * *.

"However, effective today, the position of Station Clerk is being restored and am assuming that this will dispose of the case."

This Board has repeatedly held that while carriers are free to abolish positions when the majority of the duties do not remain to be performed therein, it likewise consistently has held that the remaining duties must continue to be performed by employees within the scope of the applicable agreement, and that the remaining work cannot be turned over to employees without this agreement. (See Award 1254 and awards cited therein.)

From the whole record, the Board concludes that much of the clerical work as performed by the Claimant prior to May 9, 1938, was performed by the apprentice and the agreement was arbitrarily violated.

The Board agrees with the Carrier that there is nothing in the Clerks' Agreement that prevents the Carrier from employing a telegraph apprentice, but does not agree that a clerical position may be abolished and the clerical work of this position turned over to such apprentice.

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 Carrier violated the current agreement as contended by the petitioner.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1942.