

Award No. 4355
Docket No. CL-4369

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated the Clerks' Agreement:

(1) When effective Sunday, July 21, 1946 it reduced the Ticket Clerk's position at Ft. Sill, Okla. from a seven to a six day basis and assigned the Sunday work attaching to said position to employees not covered by the Clerks' Agreement, and

(2) When effective April 26, 1947 all holiday work attaching to said Ticket Clerk position was likewise removed and assigned to employees not covered by the Clerks' Agreement, and

(3) That carrier shall now reimburse the Ticket Clerk at Ft. Sill, whoever he may be, for wage loss suffered by reason of these violations, and compensate him eight hours each Sunday retroactive to July 21st and each holiday retroactive to April 26, 1947 at the rate of time and one-half.

EMPLOYEES' STATEMENT OF FACTS: For years prior to July 21, 1946 the Ticket Clerk position at Ft. Sill, Okla. was assigned seven days each week and June 4, 1946 the position was awarded to employee C. W. Slater, the advertisement and assignment bulletins reading as follows:

"Vacancy Bulletin #39, May 23, 1946

Location	Ft. Sill, Okla.
Title	Ticket Clerk
Hours of Service	9:00 AM to 2:00 PM 3:00 PM to 6:00 PM
Assignment	Six days a week, including Sundays and holidays. Sunday is day of rest.
Rate of Pay	\$8.35 per day.
Character of Work	Selling tickets; checking baggage and assisting working passenger trains. Assist in checking and delivery of freight; and other duties which may be assigned.
Reason for Bulletin	Vacancy."

rier's primary need is for telegraphic service on Sundays and holidays. There was absolutely no need for the services of a ticket clerk on such days to handle the few incidental ticket sales that might show up. In fact the statement of ticket sales previously quoted in the carrier's position shows there were numerous Sundays and some holidays when there were no ticket sales handled at Fort Sill.

The carrier feels that its handling did not infringe upon the rights of any clerical employee and was not in violation of any rule of the Clerks' Agreement, but should the Board determine otherwise, the carrier feels that relief should not be granted antedating the date specific claim in behalf of ticket clerk C. W. Slater was first presented to the carrier.

OPINION OF BOARD: December 18, 1941, Carrier established the position of ticket-clerk at Fort Sill, Oklahoma, on a six-day assignment and in July of 1942 changed the assignment to seven days. July 21, 1946, it was changed to a six-day basis, including holidays. April 26, 1947, holidays were excluded from the assignment. When the holiday and Sunday assignments were removed from the position, work of selling tickets and other duties in connection with passenger accounts were performed by a Telegrapher on Sundays and holidays. Employees seek compensation as indicated in the notice of claim.

It is asserted by the Carrier and admitted by the employees that the station force at Fort Sill in the early part of 1940 consisted of an agent-teleg-rapher assigned six days per week. With increase in traffic because of defense preparation and war activities, the force was gradually built up, later daily assignments of positions were gradually reduced and positions discontinued. As of September 6, 1947, there remained but an agent-teleg-rapher and a cashier-teleg-rapher on duty at the station.

The question involved herein has been presented to this Board many times and there are a number of awards cited as precedents by both carrier and employees. The Board has been quite consistent in the principal doc-trines enunciated in these many cases. The principles are fairly clear, however, the application thereof to a particular set of facts is not always easy.

If it were shown that the position of ticket-clerk herein involved contin-ued in fact as a seven-day position necessary to the continuous operation of the Carrier, there would be no question in our minds but that the Car-rier's assignment of this work to the Telegrapher on Sundays and holidays would be a violation of the Clerks' Agreement. We do not believe, however, that the employees have established that after discontinuance of the holiday and Sunday assignments on this position that it should have remained a seven-day position necessary to continuous operation. As a matter of fact, the evidence in the record is clearly to the contrary. On Sundays and holi-days since July 21, 1946, no tickets were sold at Fort Sill on two-thirds of said days and on such days as tickets were sold, the highest receipts were \$191.70 and the average about \$60 in local and interline sales plus a smatter-ing of Government tickets. In view of these facts, we think it clear that the position after July 21, 1946, was not one necessary to the continuous opera-tion of the Carrier. Hence, those Awards concerning such seven day posi-tions are of no help in arriving at a decision in this docket.

We believe that the determining factor in this case is whether or not the work performed by the Telegrapher on Sundays and holidays may properly be considered as coming exclusively within the scope rule of the Clerks' agreement. Work as such, as is true of most agreements is not described in the Scope Rule of the present agreement. Nor is the position of ticket clerk listed in the subject Agreement as has been the case in other Awards of this Board in connection with similar questions. By Award 615, it has been established that clerical work may be assigned to Telegraphers to fill out time when not occupied with telegraphy. There are, however, definite limitations on this rule; to cite just one example, the work must be either incidental to or in proximity with the work of the Telegrapher (See Award 4288). In a situation such as this, if the position of ticket-clerk were dis-continued or abolished, there is no doubt in our minds but that there would

be no violation of the Clerks' Agreement in assigning the remaining work of the position to the Telegrapher since it is clear that that is the source from whence it originated and within the holdings of this Board, particularly where a Telegrapher is the remaining position and the necessity for continued performance of Telegraphic work still exists, clerical work may ebb back.

In this case, it is shown that the need for a Telegrapher position on Sundays and holidays when the clerical position's assignment was changed existed. Does the same principle as has been enunciated in the Awards referred to above in connection with the assignment of clerical work of a discontinued position apply in the determination of a claim where work performed on an existing ticket-clerk position is assigned to a Telegrapher on Sundays and holidays? In our opinion, it would not apply in all cases. If the work were performed exclusively by the ticket-clerk as part of his regularly-assigned duties or if the position of ticket-clerk were listed in the Scope Rule of the Clerks' Agreement, we feel that that would show an intention on the part of Carrier and employees to set the same apart as exclusively Clerk's work and therefore, it could not be assigned to the Telegrapher on Sundays or holidays while the Ticket-Clerk position was still in existence. Here, however, the facts are that during the week the Telegrapher as part of his regular duties also handled ticket accounts, sold tickets when necessary and answered phone calls pertaining to travel information; all work also performed on the ticket clerk's position and work of the character which he (the Telegrapher) performed on the Sundays and holidays and for which the employees seek compensation in the claim filed herein. Under these circumstances, we believe that it was not violative of the Clerks' Agreement to permit the performance of such work by the Telegrapher on Sundays and holidays. (See Awards 2334, 3704, 3464 and 3735.)

This holding is in no way to be considered to impinge upon the accepted and well founded rule that work covered by an Agreement and regularly performed by an employe covered thereby during the week may not be assigned to an employe not covered thereby on Sundays. As pointed out in the previous paragraph of this Award, this decision is based solely on the peculiar factual situation herein presented and is intended only to apply thereto.

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 thereon;

That the Carrier and the Employees 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

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1949.