

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**

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that the Carrier violated the Scope Rule of the Agreement of the Brotherhood on August 1, 2 and 5, 1946, when Agent-Telegrapher at Condon, Oregon, was called on overtime basis to bill several carloads of lumber, work regularly assigned to Clerk.

(1) That Clerk Orvin Tierney should be paid a minimum call for August 1, 2 and 5, 1946, and each subsequent day to July 24, 1947, that Agent-Telegrapher was called to perform the same work that Clerk Tierney regularly performs during his assigned tour of duty.

EMPLOYES' STATEMENT OF FACTS: At Condon, Oregon, several carloads of lumber arrived approximately three days per week for billing, the arrival time of the lumber necessitating that billing be performed after clerk's tour of duty had ended. The entire force at Condon consisted of one clerk and one trucker, both positions covered by the BofRC Agreement, and an Agent-Telegrapher covered by the Telegraphers' Agreement. The trucker's assigned hours of duty were from 6 A. M. to 3 P. M. and the clerk and the Agent-Telegrapher assigned hours both were from 8 A. M. to 5 P. M., and prior to August 1st, 1946 Clerk Tierney had for several years been called to perform the billing of LCL and CL shipments. On August 1, 1946 the Agent-Telegrapher, an employee not covered by the B of R C Agreement, assigned himself on an overtime basis to bill the lumber received approximately three days per week, and continued this practice until July 24, 1947, when Clerk Tierney was again given the call to bill the lumber. Clerk Tierney performed all billing work that was available during his regular assigned tour of duty.

POSITION OF EMPLOYES: It is the position of the employees that billing freight is work that belongs to clerical employees, and that any clerical work performed during Clerk's regular assigned tour of duty, should also be performed on overtime, when overtime is necessary, and it is our position that Rule 38-C of the Agreement of April 1, 1945 confirms that position. It is the employees' position that prior to August 1, 1946, the carrier recognized the billing of freight as work belonging to clerk, and Clerk was called on overtime basis, in practically all cases to perform the work, this being the practice until Aug. 1, 1946 when Agent-Telegrapher started to do the billing of lumber on overtime basis, and continued to perform the work until July 24, 1947 when clerk was again called to bill lumber. The action of the Carrier in permitting Agent-Telegrapher, an employee not covered by the Clerks' Agreement, to perform the above mentioned work is a violation of the following quoted rules of the Clerks' Agreement, effective April 1, 1945:

would have been proper, even if there had been no telegraph work to be done.) As he stated in his letter dated September 30, 1946, "There is telegraphing to do," and hence it cannot be said that the agent was called solely to perform clerical work.

The Employees' Organization has failed to show, either in correspondence or in conference, any support whatsoever for their contention that a clerical employe at Condon is entitled to perform all of the billing and any other station work. The scope rule of the effective agreement does not give the employes covered by that agreement exclusive right to perform all clerical work at any point and certainly it does not establish their exclusive right to perform clerical or any other duties which are and have been for many years past performed by the agent. The Employees' Organization is asking this Board to award them the exclusive right to perform work that has been done by agent-telegraphers since this Carrier started operations and which has been covered by agreement rules and regulations since 1892.

The Carrier asserts, in conclusion, that there is no rule in the agreement and no past practice which will support the position taken by the Employees' Organization in this unadjusted dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: At Condon, Oregon, Carrier maintained a station force consisting of an Agent-Telegrapher covered by the Telegraphers' Agreement and two employes under the Clerks' Agreement, one a Clerk (Claimant) and the other a Trucker. Approximately three days each week, several carloads of lumber arrived at Condon for billing after the Clerk's tour of duty had ended. After August, 1946 and to July 24, 1947, the Agent assigned himself a call and performed this billing on an overtime basis. On the property a controversy arose as to the right of the Agent to perform this work. In an effort to dispose of the claim, Carrier's Vice President wrote the General Chairman concerning the claim, saying in part as follows:

"General Manager Collins will arrange conference with you at a mutually satisfactory date, and if you are unable to reach satisfactory disposition of these claims, a statement of the claim, joint statement of facts, and your respective positions should be submitted to me."

Pursuant to that letter, after being unable to reach a settlement, the General Manager and General Chairman made a joint submission on October 29, 1947, to the Vice President which is set forth as an exhibit in the record. From this submission, which is a most contradictory document, we find under a heading reading "STATEMENT OF FACTS" the following language:

"At Condon, Oregon, several carloads of lumber arrived approximately three days per week for billing, the arrival time necessitating that billing be performed on an overtime basis prior to August 1, 1946. Clerk Tierney had, for many years, been called to perform all billing of both LCL and CL shipments, but on August 1, 1946, Agent-Telegrapher, an employe not covered by the BoRC Agreement, assigned himself an overtime call and continued on an average of three days per week to do the same. The overtime work consisted of billing, work which Clerk Tierney performs during his regular tour of duty."

However, at the close of the submission, above the signature of both the General Chairman and the General Manager, the following language appears:

"Payroll records for period July, 1945 to July, 1946, inclusive, show that Clerk Tierney was not paid any calls in October and December, 1945, January, February, April, May, June and July, 1946, and but one call in March, 1946."

Why either the General Chairman or the General Manager signed this submission without reconciling these two somewhat divergent statements does

not appear. One fact which appears in the joint submission and which is not contradicted, and which we accept as true, is that the overtime clerical work (billing) performed at nights was work which Clerk Tierney performs during his regular tour of duty.

Carrier argues that none of the work at the Condon Agency is work belonging exclusively to clerical employees but only such non-telegraph work as the Agent-Telegrapher does not have time to perform is handled by clerical employees and hence that it was no violation of the Scope Rule to assign this work on an overtime basis to the Agent. Further, that the Agent was not called primarily or solely to perform clerical work but to handle telegraphic duties. Turning to the record, however, we find that the Employees assert that Claimant performed billing work as part of his regular assignment and in the submission to the Vice President above referred to we find that there it was not claimed by Carrier that billing was also performed by the Agent during the day but the General Manager merely relies on the general statement that the Agent is responsible for all work at the station and must be capable to do any work, including all clerical work, that is done there. At a later point in its submission Carrier does assert specifically that billing work was performed by the Agent during his regularly assigned hours, but as against that the Employees state that all of the billing work was done by the Claimant. If the billing work during the day was indiscriminately performed by both the Agent and Claimant, it is difficult to understand why the General Manager in advising the Vice President along with the General Chairman about the factual situation did not specifically point out this fact, a factor which he must be presumed to have recognized as important to the final disposition of this claim. It further appears from the record that Claimant was called after July 24, 1947, to perform the work on an overtime basis. However, to rebut any inference of recognition by Carrier of Claimant's right to perform the overtime work, Carrier submits copy of a letter from its Vice President to the General Chairman, stating in part as follows:

"The practice of the agent taking a call evenings was not discontinued after July 24, 1947, but continued during August, September and the first half of October, 1947, and Clerk Tierney reporting for calls on days CK&S arrived with lumber to be billed, at 8:00 P. M.

The practice of the agent and the clerk both reporting on call from July 24th to October 16th in the evening, appears to have been a racket."

It is to be noted that, although the Vice President termed the practice a racket, he did not designate whether the Agent or the Clerk was the racketeer nor does the Carrier indicate what happened insofar as calls for this work is concerned after October 16, 1947. On the other hand, the Employees assert with the effective date of the retirement of the Agent and the appointment of his successor that arrangement for handling LCL and CL billing that prevailed prior to August 1, 1946, was restored. It is to be noted that this claim does not go beyond July 24, 1947. We think the evidence preponderates in favor of the Employees on the factual question with respect to the regular assignment of the billing work to the clerical position.

As to the contention that the Agent was not called primarily to perform clerical work but to perform telegraphic service, we think that the record shows that the work was primarily clerical and that the need for telegraphic service was not established as evidenced by the general statement of the General Manager in the joint submission above referred to, to-wit: "There is always some telegraph work to be done when the agent is available and on duty to do it" and the rather weak statement of the Agent appearing in the record "There is wire work consisting of Western Union and reporting train as well as the clerical work. The Kinzua Pine Mills handle a nice volume of telegraphic business incidental to the lumber trade and frequently other rush telegrams after 4 P. M." The Employees assert that this was nothing but regular telegraphic work which could have been performed during

regular hours or held over until the next day. We believe that the evidence preponderates in favor of this contention of the Employees.

In view of the conclusions reached above, we believe that it is clear from the holdings of this Board with respect to the performance of clerical work by Agent or Agent-Telegraphers or by other employees as incidental to the performance of the duties of their positions, that the assignment of the billing work to the Agent was a violation of the Scope Rule of the Clerical Agreement. (See Awards 2587, 3988.)

It follows from what we have said above that a sustaining award is in order.

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 Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.