

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) Clerk, H. D. Williams, McComb, Mississippi, be paid eight (8) hours pay at punitive rates for Sunday, Sept. 15, 1946, (his relief day) and all subsequent Sundays due to the assignment of an employee of another craft or class to perform the duties of his position.

(b) That the position of second shift ticket clerk, Ticket Office, McComb, Miss., Occupation No. 389, be re-established and re-assigned on a seven (7) day basis as heretofore.

EMPLOYES' STATEMENT OF FACTS: (a) Prior to Friday, Sept. 13, 1946, the position of second shift ticket clerk, Ticket Office, McComb, Miss., Occupation No. 389, hours 2:00 P. M. to 11:00 P. M., rate \$7.75 per day was a seven (7) day assignment, and all of the work connected with this position, viz., selling tickets, giving out ticket information, making up ticket reports, handling and remitting cash, etc., was performed by Clerk H. D. Williams, and is work which comes under the Clerks' Agreement.

(b) On Sept. 12, 1946, the Carrier issued Bulletin Notice reading as follows:

"McComb, Miss., Sept. 12, 1946

All Concerned:

Effective Friday, Sept. 13, 1946, second shift ticket clerk, ticket office, McComb, Miss., Occupation No. 389 hours 2:00 P. M. to 11:00 P. M., seven days per week rate \$7.75 per day is abolished.

(s) T. J. Casey, Superintendent."

"All Concerned:

BULLETIN NO. 53

Position of second shift ticket clerk, ticket office, McComb, Miss., Occupation No. 389, hours 2:30 P. M. to 11:30 P. M., one hour off for lunch, rate \$7.75 per day, six days per week with Sunday off, now open. Applications will be received through Sept. 18, 1946.

(s) T. J. Casey, Superintendent."

(c) That after the position in question was reduced from seven days to six days, such work as was performed by Clerk, H. D. Williams, on seven

The Board will appreciate that although on certain Sundays the statement, *supra*, reflects that no train orders were issued, nevertheless an operator's presence was required in the event of such contingency and also to handle any ordinary message work that arose.

Rule 43 provides a guarantee of six days work per week—not seven. The position of ticket clerk was not necessary to the continuous operation of the carrier as the work in question formerly and for many years in the past was performed by operators; the ticket clerk's position being utilized **only** when the preponderance of work became such as to require someone to **assist** the operator in its performance. When this happened, clerks were assigned to **assist**.

In summation, the carrier points out the following facts involved here:

(1) The work involved in this claim was performed by operators many years prior to the original date of the Clerks' agreement, when the current agreement was consummated, and thereafter without prior complaint.

(2) The work involved in this claim is within the scope of the agreement with The Order of Railroad Telegraphers as shown herein.

(3) By their acquiescence in past practice the clerks incorporated into their agreement their permission that operators can properly do this work.

(4) An operator's presence is necessary.

(5) The work on Sundays at this station is materially lighter than on weekdays.

(6) The operator has sufficient time during his tour of duty to sell tickets and perform related station clerical work.

(7) The Carrier is obliged to operate as efficiently as possible.

(8) The Carrier does not subscribe to the theory that two men shall be employed to do one man's work.

(9) The Employees' request is tantamount to a request to enhance earnings. This is not required. See First Division Award 11605.

(10) The Employees' request is without schedule foundation. It has been repeatedly stated by this Division and other Divisions of the National Railroad Adjustment Board and by many referees who have assisted the several Divisions in disputes before them, that where the rules of the agreement in effect are clear and the intent of the parties expressed without ambiguity, such rules can not be interpreted to contain provisions that are not expressed or were not intended by the parties.

(11) This claim should be dismissed.

OPINION OF BOARD: Prior to September 13, 1946, the second trick ticket clerk at McComb, Mississippi, was assigned 2:00 P. M. to 11:00 P. M., seven days a week. On September 12, 1946, the position was abolished and a position of second shift ticket clerk, assigned 2:30 P. M. to 11:30 P. M. six days a week, was bulletined. It is the contention of the Organization that the Carrier violated the Agreement when it reduced the position from seven to six days per week for the reason that the Sunday work still remained and was improperly assigned to an employee under the Telegraphers' Agreement. The occupant of the position, H. D. Williams, claims eight hours' pay at the punitive rate for each day the Sunday work was performed by an employee of another craft.

The record shows that from 1931 to 1942, the entire force in the passenger station at McComb consisted of a ticket agent-operator and two operators working around the clock. In 1942, the United States Army activated Camp Van Dorn which resulted in an increase in the work of the office. The office force was increased until at one time six clerks and five telegraphers were working. When the camp was deactivated, force was reduced until on September 1, 1946, there were employed in this station one Ticket Agent, three operators and one clerk, all working seven days per week. On September 12, 1946, the Carrier reduced the Clerk's position to a six day assignment for the purpose of reducing force to that extent. The sale of tickets on Sunday was thereafter performed by the operators.

The record conclusively establishes the necessity for a telegraph operator on each shift. Under such circumstances, a telegrapher may properly perform clerical work incidental to his work as a telegrapher or in proximity thereto, to the extent required to fill out the position he occupies. Award 4288. When the work of clerks exceeds that which the telegrapher can perform and it becomes necessary to increase forces, the excess clerical work belongs to clerks and must be assigned to them. If the work recedes to the point where the telegraphers can perform it all, it is the clerks and not the telegraphers which must be cut-off when telegraphic work remains to be performed.

It is the rule, however, that when the work demands the assignment of a clerk, all of the clerical work belongs to the clerk's position and when such work is assigned on week days it cannot be assigned to employees not under the Clerks' Agreement on Sundays. Awards 3858, 3425, 2549.

That clerk's work remained to be performed on Sundays is established by the record. In fact, the evidence shows quite conclusively that the position was a seven day position necessary to the continuous operation of the Carrier. The evidence does show some reduction in the number of tickets sold on Sunday as compared with those sold on week days, but on the other hand the income from ticket sales was greater on Sundays. There is some evidence also that the second trick operator on Sunday was compelled to neglect telegrapher's work and leave it for others to perform because of the ticket work he was obliged to do. All this convinces us that the Agreement was violated when the Carrier reduced the position from seven to six days per week when clerk's work remained to be performed on the seventh day. Awards 3900, 3979, 4320.

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 Agreement was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1949.