

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas G. Begley, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: The Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement.

1. When on November 6, 1947 it removed work of booking cars in the Butte Yard Office out from under the scope and operation of the Clerks' Agreement and assigned said work to an employe not covered by the Clerks' Agreement and not holding any seniority rights under it entitling him to perform such work.

2. That said work be now returned to the scope and operation of the Clerks' Agreement and performed by employes under said Agreement, subject to the rules of the Agreement.

3. That Clerk Stephen Soltesz, the incumbent of the position on which this work is performed, be compensated for wage loss sustained, i.e., five hours at the time and one-half rate for November 6, 1947 to November 30, 1947, and that Clerk W. J. Hinand be compensated for five hours at the time and one-half rate for December 1, 1947 and each and every day thereafter that this work was performed by an employe outside of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: On November 6, 1947 the Carrier established a Yard Office at Butte, Montana, and the following clerical force was moved from the freight office to the new yard office:

- 1 Interchange and Switching Clerk, Assigned hours 7:00 A.M. to 3:00 P.M.
- 1 Clerk, Assigned hours 3:00 P.M. to 11:00 P.M.
- 1 Clerk, Assigned hours 11:00 P.M. to 7:00 A.M.

Among the various duties assigned to the clerical employes involved in this claim, was the work of booking cars, generally known in yard offices as "bibling cars". The assignment of this work was further verified on November 20, 1947 when the hours of duty of one of the positions was changed with an assigned period of from 4:00 A.M. to 12:00 Midnite. We are attaching this bulletin as Exhibit "A". This bulletin stated very clearly that the work of booking cars, or bibling cars, was part of the work assigned to this clerical position.

trary, the organization is trying to move in on work it has not performed for many years, if ever." (Award 3704).

(4) From March 1, 1920, to date, during which period three schedules have been negotiated, the practice of using telegraphers to perform clerical work, including the booking of cars, has been in effect, and this existing practice has not been abrogated or changed by the terms of such agreements. (Award 4104).

(5) Such practice at Butte has not been contested prior to the initiation of the present claim and, therefore, "such a delay indicates concurrence in construction of agreement made by the Carrier." (Award 1435, also see Awards 757, 1811, etc.)

The Carrier holds, therefore, that the claim of the Employees in this case has no foundation on either rule or practice and must, accordingly, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On November 6, 1947, the Carrier established a Yard Office at Butte, Montana, and the following force was maintained:

1 Interchange and Switching Clerk	7:00 A.M. to 3:00 P.M.
1 Clerk	3:00 P.M. to 11:00 P.M.
1 Clerk	11:00 P.M. to 7:00 A.M.
1 Telegrapher	4:00 P.M. to Midnight
1 Telegrapher	12:00 Midnight to 8:00 A.M.

A claim was filed with this Board by the Brotherhood and after the submissions were in the parties agreed to make a joint check of the operation complained of and said joint check was made on January 28, 1950, and submitted to the Board. The joint check submitted to the Board and signed by the parties to this dispute reads as follows:

"RESULT OF JOINT CHECK MADE AT BUTTE, MONTANA, JANUARY 28, 1950, BY F. A. EMMER, GENERAL CHAIRMAN, REPRESENTING THE EMPLOYEES, AND F. H. MACDONNELL, WAGE AND SCHEDULE SUPERVISOR, REPRESENTING THE CARRIER.

The following facts were established:

During the years 1917, 1918 and 1919, clerks were assigned to booking cars on all tricks.

From about the first part of 1920 to the latter part of 1943, this work was handled by telegraphers on the third trick, clerks handling it on the first and second.

From the latter part of 1943 to the latter part of 1947, all of this work was performed by clerks, exclusively.

A third trick telegrapher was put on October 1, 1947, and he was assigned car record work, that is, bringing up the work that was behind at that time and the clerks were performing the current work.

On December 1, 1947, the work was about six months' behind and an additional clerk was put on as of that date to help bring it up to date. This clerk was employed exclusively in this work and maintained the current record while the telegraphers picked up the back log. The work was brought up to date in July, 1948 and the clerical

position established December 1, 1947, was abolished and all of the work reverted to the telegraphers.

During the period 1943 to 1947, the clerical position to which the recording of cars was assigned was held respectively by the following employees: S. W. Crooks, L. C. Hample, Stephen Soltez and W. J. Hinand. Overtime work was performed on this position practically continuously during this period. Clerk Crooks states that he averaged approximately three and one-half hours per day keeping up this work. Clerk Hample stated he averaged about the same. Clerk Soltez who held this position in the early part of 1947, stated he worked from three to five hours overtime per day and Clerk Hinand, who relieved him the latter part of 1947, stated that he worked from three to six hours overtime practically every day up to November 6, 1947, when the work was turned over to the telegraphers. The statements of these clerks were verified in substance by the Agent.

FOR THE EMPLOYEES:
/s/ F. A. Emme
General Chairman

FOR THE CARRIER:
Wage and Schedule Supervisor
/s/ F. H. MacDonell

Signed at St. Paul, Minnesota, this 27th day of February, 1950."

The Brotherhood claims that booking or bibling of cars is clerks' work and has been performed by clerks over a period of years and was assigned to clerks by the Agent on November 20, 1947, after the clerks had moved from the Freight Office to the Yard Office on November 6, 1947. The bulletin signed by Agent Yunker issued on November 20, 1947, reads as follows:

"Butte, Montana
November 20, 1947

Butte, Montana
Yard Office

The following are duties of the three yard clerks at Butte Yard Office. Effective at once.

Clerk 8 A.M. to 4 P.M.

Yard Reports 211.
All 3 P.M. Reports.
Manifesting of trains in and out bound.
Checking interchange and corrections.
Phone work with city office and phones.
Monthly car count. Reclaims.

Clerk 4 P.M. to 12 Midnight.

Manifesting of trains in and out.
Writing up inbound train sheets.
Passing up waybills and delivery to connecting lines.
Car Bible.
Phone

Clerk 12 Midnight to 8 A.M.

Manifesting of trains in and out bound.
Finishing yard sheets.
Writing up train sheets.
Passing of waybills and delivery to connecting lines.
Interchange GN to NP BAP & UN PAC.
Checking yard before 7:30 A.M.
Phone.

signed

J. R. Yunker, Agent"

A bulletin signed by Agent Yunker on January 9, 1948, reads as follows:

Butte, Montana
January 9, 1948

Butte Yard
Attention All Yard Clerks

The 12 MN. to 8 A.M. Clerk now making car interchanges will also make car interchange corrections.

The 8 A.M. to 4 P.M. and 12 MN. to 8 A.M. will also bible cars in their leisure time.

signed

J. R. Yunker, Agent"

The Claimants contend that the work of booking or bibling of cars became the assigned duties of all three positions; that the joint check shows that this work was performed by clerks during the years 1917-1918-1919; that from 1920 to the latter part of 1943, this work was handled by telegraphers only on the third trick—clerks handled the work on the first and second tricks; that from 1943 to the latter part of 1947 the clerks handled this work exclusively; that on November 6, 1947, a telegrapher was given the work on the third trick. The Clerks ask that the work be returned to them and that certain employes be compensated for the overtime they would have earned performing this work if it had not been given to the third trick telegrapher.

The Carrier contends that this work was performed by telegraphers on the third trick for a number of years. During the World War II period the telegrapher's work was so heavy that clerks were assigned to this work; that on November 6, 1947 it was again returned to the telegrapher; that due to the back log a clerk was hired on December 1, 1947, and when the work was again brought up to date in July 1948, the extra clerk's position was abolished and the telegrapher on the third trick resumed this work. The Carrier relies principally on Award 615. The Carrier states that the Clerks do not have a right to the exclusive performance of clerical work and that telegraphers can do clerical work in connection with their duties.

The question to be decided is whether or not the work performed by the third trick telegrapher of booking or bibling of cars was a violation of the Clerks' Agreement. This work was performed by third trick telegrapher for a period of thirteen years, until the World War II period, when it was performed by clerks on the third trick from 1943 to November 6, 1947. Then on October 1, 1947 a third trick telegrapher was put on and the joint check shows he was assigned car record work. The bulletin of January 9, 1948 states: "The 8 A.M. to 4 P.M. and the 12 MN. to 8 A.M. (clerks) will also bible cars in their leisure time." Who is to perform the main job of booking or bibling is not stated, or who has exclusive right to this work is not stated in the Agreement or either of the bulletins. Judge Carter of the Supreme Court of Nebraska has stated: "It is the rule long adhered to by this Board that a telegrapher with telegraphic duties to perform (and we must assume even though it is not stated in the joint check that there were telegraphic duties to perform) may properly perform clerical work which is incidental or in proximity to his telegraphic work, in such amount as to fill out the telegrapher's assignment. It is the rule, also, that where the clerical duties become so great that the telegrapher cannot perform them, such excessive clerical work belongs to the Clerks." Award 4492. With this statement we concur.

In the instant claim, third trick telegraphers have performed this work from the year 1919 to the war year 1943. Then when his duties became so

great, the work was given to clerks. When the work slackened, it was again given back to the third trick telegrapher. When it increased, it was given to a clerk on December 1, 1947, and when it again decreased in July 1948, it was returned to the telegrapher. It was work incidental to and in proximity with his duties. This we believe the Carrier had a right to do. A denial of this claim is in order. Awards 523, 615, 638, 1566, 2334, 3003 and 4492.

The Brotherhood contends that Rule 37 (Overtime) which reads as follows:

"When overtime work is required by the Company, the incumbent of the position to which such overtime work is necessary shall be given preference in its performance. The same principle shall apply in working extra time on Sundays and holidays, except that in cases where Sunday or holiday overtime service is necessary which affects more than one position in an office, station or store, the incumbent of the position to which the greatest amount of such work is regularly attached shall be used, but may perform any other necessary work pertaining to other positions, provided the time devoted to work on any position other than his own does not exceed one hour and 30 minutes, in which case he will be paid for all such overtime work at the rate applicable to the highest rated position on which work is performed, but not less than two (2) hours.

However, in cases where it is known that more than one hour and 30 minutes overtime work is going to be necessary on each of two or more positions, the regular incumbent of each such position shall be called to perform same.

NOTE: This does not in any way nullify the provisions of Rule 38 (the Call Rule). Such rule, however, is only applicable in cases where the necessity for Sunday and holiday service is irregular and does not permit the continued use of an employe for less than eight (8) hours on Sundays over long continued periods; calls can not be included as part of a regular assignment and specific call must be given on each occasion such service is required. It is understood that this arrangement can not in any way be understood to provide a means to avoid filling positions on which continuous service is required on Sundays and holidays, nor to permit the continued use under the Call Rule of an employe on Sundays or holidays over long extended periods, although it is understood that the practice of calling employes for service on such days for several successive weeks due to seasonal increases in business such as the grain rush in the Fall, the beet sugar shipments, fruit rush, etc., is permissible."

should govern this claim as many agreements do not have this rule and that when clerks do perform some bookings or bibling of cars, that all overtime work of this nature should be given to the clerks; also, that certain clerks did work overtime in performing this work before a telegrapher was assigned to duty on October 1, 1947. When the third trick telegrapher was assigned to duty on October 1, 1947, and he continued to fill in his time as a telegrapher with the work of booking and bibling of cars on this trick, it was not necessary to perform overtime work. Therefore, this rule cannot be considered in this claim.

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 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 4th day of August, 1950.