

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)

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

1. When, commencing Saturday, September 3, 1949 and on all subsequent Saturdays of each week and on Labor Day, September 5, 1949 and all subsequent Holidays it unilaterally designated to others not in its employ and not subject to provisions of the Agreement effective August 1, 1947 the handling of mail including parcel post between the Carrier's Baggage-room and passenger trains at Carrier's passenger station, Monroe, Michigan.

2. That B. H. Green, regularly assigned Clerk at Monroe on September 3, 1949, be compensated for wage loss sustained on that date and all subsequent Saturdays and Holidays to the extent provided for payment for such service as was denied to Mr. Green and his successors under the Notified or Called Rule 30 of the Agreement between the Brotherhood and the Carrier.

EMPLOYEES' STATEMENT OF FACT: Prior to September 1, 1949, Clerk Green was assigned from Monday to Saturday, 10:00 A.M. to 7:00 P.M., and it is part of his assigned duties that when the contract drayman which hauls mail from the Post Office to the railroad, and would bring same to the depot, Clerk Green would load it either on a two or four wheel truck, whichever was necessary. The contract drayman would then leave. When train No. 46 would arrive at 6:40 P.M., Clerk Green would put all the mail on the train and take off what mail was consigned to this station. (Employees' Exhibit No. 1). Such mail that was taken off, later was picked up by the contract drayman and delivered to the Post Office.

Effective with the 40-hour work week agreement which went into effect September 1, 1949, Clerk Green's assignment was changed to a five day work week, with Saturday and Sunday as his rest days. With Saturday as one of his rest days, and Clerk Green not working on Saturday, the contract drayman was furnished a key to the baggage-room, (Employees' Exhibit 2) took a two or four wheel truck whichever was needed, loaded the mail on these trucks and handled the mail on into the train, and removed such mail from the train to the truck. The duties that he performs on Saturday is exactly what Clerk Green performed prior to the 40-hour work week.

4. While the United States mail messenger may truck mail through the baggage room at Monroe on Saturdays, in some instances this is not required, and the facilities of the baggage room serve no purpose at all to the mail messenger on Saturdays, as on these days he is required under postal regulations to meet the train. The messenger has used the baggage room for his purposes on other days of the week for the past many years, the inbound mail being stored in that room for him, to be picked up by him after employees at the station have left for the night. The carrier is required under postal regulations, however, to "provide and render accessible..." for the messenger a station truck in the event one is needed. We submit that in complying with this postal regulation by furnishing the messenger a key to the room where the truck is kept we are not violating the Clerks' agreement. The Board will appreciate that the truck could be kept outside, chained and locked, or a special shelter could be built for it. We feel this should not be necessary, however, in view of the fact that the baggage room, used as such years ago when passenger business required it, is now used for little or nothing other than a place to keep the two-wheel station truck and leave mail for the messenger. What little baggage is handled at Monroe is now kept in the station proper, adjoining the baggage room, as the drinking water for section gangs working out of Monroe during the day is kept in the open and unattended baggage room. This should make it clear to the Board that the term "baggage room" as used in this submission should not be construed as implying that the room in question is used to any extent for the handling and storage of baggage. This term is used simply because the room is known as the baggage room, having been used as such many years ago when passenger traffic in and out of Monroe was extensive. If the room were to be correctly named at this time, it would be called a coal and furnace room, as a furnace has been installed in the room and a large coal bin has also been built in it to supply the furnace as well as other heating facilities as are required.

5. The Board will note that Award 539 of this division upheld the right of a carrier to contract with people outside an agreement to handle mail between station and post office on Sundays and holidays while during the week an employee of the carrier was required to perform this service. We submit that the principle established in this award would appear to more than sustain our position in the instant case.

6. As we have shown there are no employees scheduled to be on duty under their regular work week assignment at the time train 46 is due and does stop at Monroe on Saturdays and holidays, we have shown that it is not the responsibility of this carrier to perform the work the employees here claim. We do not feel that we should be required to employ persons to perform work that is the responsibility of the Post Office Department rather than that of the carrier, as no rule of the Clerks' agreement requires this. We feel the Post Office Department has the right to handle their mail in accordance with their regulations by reason of the postal laws and regulations now in effect and it is not our impression that the present rules of the Clerks' agreement give the Clerks' organization the right to perform on an overtime basis work which may lawfully be required of the United States Postal Department mail messenger.

In consideration of the facts related in the foregoing, the carrier respectfully requires that the Board deny this claim.

(Exhibits not reproduced).

OPINION OF BOARD: The System Committee of the Brotherhood makes this claim on behalf of the regularly assigned clerk at Monroe, Michigan, on a notified or call basis for all work of his position performed by others outside of the agreement on Saturday, 9-3-49, and on Labor Day, 9-5-49, and on all Saturdays and holidays subsequent thereto when such work continued to be so performed.

The claim arises out of the fact that on all Saturdays and holidays after 9-1-49, the effective date of the 40-hour week, the handling of mail, including

parcel post, on and off passenger train No. 46, which is scheduled to arrive at Monroe at 6:43 P.M., is being done by the mail messenger employed by the United States Postal Department.

The record shows that prior to 9-1-49, effective date of the 40-hour week, there were three employes at the Monroe station. They were a clerk, an agent and a telegrapher. The clerk's assignment covered the hours of the scheduled arrival of train No. 46. As part of his duties he received the mail for this train from the mail messenger. When received he placed it on a truck and then placed the truck, with the mail thereon, in the baggage room. It remained there until the train was scheduled to arrive. When the train arrived the clerk placed this mail on the train and received from the train whatever mail was on it consigned for Monroe. This he placed on the truck and then placed it back in the baggage room from where the mail messenger got the mail at his convenience. This the clerk did on every day from Monday through Saturday as those were the days of his assignment.

As of 9-1-49 both the clerk and the agent were given five day assignments from Monday through Friday with Saturday and Sunday as their relief days. Only the telegrapher remained on duty on Saturdays and Sundays, his being a seven day assignment with hours from 11:15 P.M. to 7:15 A.M. Consequently the Carrier had no employe on duty at or near the scheduled arrival time of Train No. 46 on Saturdays and Sundays. From Monday through Friday the clerk continued to perform this duty. However on Saturdays and holidays, on and after 9-1-49, the mail messenger put the mail, including parcel post, directly on Train No. 46 and received the mail from it that was consigned to Monroe, using a truck of the Carrier to assist him if the mail was more than he could personally carry. The truck used was stored by Carrier in the baggage room of the depot. The mail messenger was given a key thereto so he could get it out whenever he needed it. Train No. 46 was scheduled daily except Sunday so only Saturdays and holidays are here involved.

Any work that it is necessary for the Carrier to have done in performing the functions of a common carrier or any work which it has the duty or responsibility of performing belongs to the class of employes that have contracted for it and they are protected by their collective agreement so providing. If covered by the scope of their agreement carrier cannot contract its performance to others nor permit it to be performed by other employes not covered thereby. To do so is a violation thereof.

The United States Postal Department regulates and controls the handling and carrying of mail, including parcel post. Under its regulation, Section 92.43 paragraph (a), when mail trains arrive at times when there is no railroad employe on duty the Carrier is not obligated to place the mails on or take them from such train but only to provide the necessary trucks for the mail messenger if trucking is necessary.

While the Postal Department, under the foregoing regulation, reserves the right to require the performance of this service by the Carrier at any time during a 24-hour period there is no evidence here that such request was made after it had been informed by the Carrier that no employe would be present to perform this duty at Monroe on Saturdays and holidays after 9-1-49.

Section 94.10 of the United States Postal regulations make it part of a mail messengers duties to receive the mail from, and deliver it to, mail cars even though they are not accessible to the vehicle he is using for the transportation hereof, if there is no Carrier employe on duty at the time. As previously stated, the only duty of the Carrier in such cases is to furnish the necessary trucks for doing so if trucking is necessary.

Under the circumstances as shown by the record it was not a duty or responsibility of the Carrier to put the mail on and off of Train No. 46 at Monroe on Saturdays and holidays after 9-1-49. Therefore it did not violate

any provisions of its agreements with the Brotherhood when it failed to call the claimant to perform it on those days.

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 Employes 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 has not violated 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 20th day of December, 1950.