

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

NORTHERN PACIFIC RAILWAY COMPANY

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

STATEMENT OF CLAIM: Claim as presented by the System Committee of the Brotherhood in behalf of G. P. Guth, cashier, Crookston, for payment of eight hours at time and one-half rate on Saturday, September 3, 1949, and on Sunday, September 4, 1949, and subsequent Saturdays and Sundays.

CARRIER'S STATEMENT OF FACTS: There is maintained at Crookston, Minnesota, one position of agent, one position of telegrapher and one position of cashier.

The position of agent is excluded from the scope of any agreement but the Telegraphers' Agreement effective April 1, 1948, stipulates the manner in which vacancies in this position will be filled. The position of telegrapher is included within the scope of the Telegraphers' Agreement effective April 1, 1948, and the position of cashier is included within the scope of the Clerks' Agreement effective June 1, 1946.

Prior to September 1, 1949, the position of cashier was assigned to work from 7:30 A. M. to 4:30 P. M., with one hour for meals, Monday through Saturday. Effective September 1, 1949, the position of cashier was assigned to work from 7:30 A. M. to 4:30 P. M., with one hour for meals, Monday through Friday. The position of cashier was not filled on Sunday prior to September 1, 1949, and has not been filled on Saturdays and Sundays commencing with September 1, 1949.

Prior to September 1, 1949, the position of telegrapher was assigned to work from 9:00 A. M. to 6:00 P. M., with one hour for meals, Monday through Saturday, and on Sundays and holidays this position was assigned to work from 2:15 P. M. to 5:15 P. M. Commencing with September 1, 1949, the position of telegrapher has been assigned to work from 9:00 A. M. to 6:00 P. M. with one hour for meals and this position has been filled seven days per week.

Prior to September 1, 1949, the sale of tickets at Crookston was handled by the cashier and agent during the assigned hours of the occupant of the position of cashier and was handled by the occupant of the position of telegrapher outside the assigned hours of the position of cashier on week days and on Sundays and holidays. Commencing with September 1, 1949, the cashier and agent handle the sale of tickets during the assigned hours of the occupant of the position of cashier and the telegrapher handles the sale

Rule 3 covers the method by which an employee's seniority date is established.

The Employees contend that in reducing the assignment of the Cashier at Crookston, Minnesota, from six to five days per week, the Carrier violated the Scope Rule of the Clerks' Agreement when it failed to establish a relief position and assigned the duties attached to the Cashier's position to the Telegraph Operator on Saturdays and Sundays.

A list of the duties ordinarily performed by the Cashier at Crookston, Minnesota, is attached hereto as "Employees' Exhibit No. 1."

The action of the Carrier, as cited in this dispute, being in violation of the agreement, the claim, as presented, should be sustained in its entirety, and we earnestly urge your Honorable Board to so hold.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim as presented by the System Committee is in behalf of G. P. Guth, who holds a position at Crookston as cashier. Prior to September 1, 1949, his assignment was Monday through Saturday, the position not being filled on Sunday. After September 1, 1949, his assignment was Monday through Friday and the position was not filled on Saturday and Sunday. At this same station a position of telegrapher was filled 9:00 A. M. to 6:00 P. M., six days a week, and on Sunday from 2:15 to 5:15 P. M. After September 1, 1949, the position was filled 9:00 A. M. to 6:00 P. M. seven days per week. The sale of tickets was handled by the cashier when he was on duty, and by the telegrapher when the cashier was not on duty. It is the contention of the Brotherhood that the cashier has the right to the work of ticket sales on Saturdays and Sundays; and that the Carrier has violated the Scope Rule of the Clerks' Agreement when the telegrapher is permitted to do this work. The claim is for time and one-half for each Saturday and Sunday after September 1, 1949, that the Carrier permitted someone not under the Clerks' Agreement to perform on these days the work of cashier, principally ticket selling. It, therefore, becomes necessary to determine at the outset whether the work here involved is reserved exclusively to employees covered by the Clerks' Agreement.

There is no dispute between the parties that outside of the assigned hours of the cashier the telegrapher handled the sale of tickets, particularly on Sundays when the cashier was not on duty; and it is not disputed that the Scope Rule of the Clerks' Agreement does not list any employees as ticket clerks. It is asserted by the Carrier that by long practice on this property employees not under the Clerks' Agreement have performed the work of selling tickets. The Carrier supports this by the fact that, without protest, the telegrapher has performed the work of the cashier on Sundays since the position was established in 1945; that at Jamestown from 1932 no ticket clerks were employed and telegraphers handled ticket sales until a ticket clerk's position was established in 1937, but abolished the next year. In 1944, in settlement of a dispute over this abolishment the parties agreed that in the establishment of a ticket clerk's position the telegraphers could sell tickets and perform work incident thereto "during or outside of the hours of assignment of the ticket clerk." While this understanding affected a station with which we are not here concerned, it nevertheless is indicative of the interpretation the parties placed on their Agreement respecting the right of telegraphers to sell tickets. It also should be particularly noted that at no time was the claimant assigned a seven-day position; his position prior to September 1, 1949, was not filled on Sunday, but the telegrapher performed the work of selling tickets and other incidental clerk work.

It is, however, the contention of the Organization that since September 1, 1949, the clerk's work of selling tickets on Saturday is now performed by one not covered by their Agreement and this is in violation of the provisions of the 40 Hour Week Agreement respecting relief assignments. But as we have found that the work involved is not exclusively clerk's work and not

protected by the Scope Rule of the Clerk's Agreement, it would follow that provisions for relief of positions covering work not exclusively under the Agreement would have no mandatory effect.

We have carefully examined the Awards cited by the Organization, and in particular those dealing with the proposition that work incident to a particular position six days a week was likewise incident to the position on the seventh day. Awards 3858, 4059 and 4477 are representative of the cases cited. In Award 3858 the entire work of selling tickets had been assigned to clerks, as distinguished from our finding here that as a fact the entire sale of tickets had not been assigned to the clerks. In Award 4059 the work of selling tickets was a seven-day job necessary to the continuous operation of the railroad and the work having been assigned clerks, they had a right to it the full seven days. But here we have never had a seven-day assignment for the cashier. And likewise in Award 4477 the essential finding was that the position was a seven-day one.

On the other hand, where the Board has found that the work of ticket clerk had not passed under the exclusive protection of the Scope Rule of the Clerks' Agreement, it has permitted the assignment of such work to telegraphers on Sundays and holidays (Award 4355). In the case now before the Board, the work of selling tickets was given to employees covered by the Clerks' Agreement on their assigned days, and others performed the same work outside of the assignment. In principle, there is little distinction between one unassigned day and two such days. We must, therefore, find that under the facts here shown the claim is not valid. This decision is based on the factual situation here presented and is intended only to apply thereto.

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 Employee 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

The facts of record do not show a violation of the current Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of March, 1951.