

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad Company:

- (1) That the Carrier violated and continues to violate the Telegraphers' Agreement, when, commencing on October 1, 1949, without conference and agreement, the Carrier unilaterally removed from the employes covered by said agreement and from said agreement at Columbus, Miss., the duties of selling tickets, checking baggage, receiving over the telephone from train dispatcher and posting on station bulletin board arriving time of train No. 116, meet and work train No. 116, which arrive and depart at said station outside of the regular assigned hours of the ticket agent-operator at this one-man station, a part of whose duties it had been to perform this work since the abolishment of assistant ticket agent-telegrapher position July 4, 1939, and the reclassification of ticket agent position to that of ticket agent operator, and
- (2) That the duties and work here involved shall be restored to the Telegraphers' Agreement and to employes under said agreement, and
- (3) That J. R. Watson, regularly assigned ticket agent-operator, or any other employe covered by the agreement who may have been used in relief at this one-man station named herein be compensated under the call and/or overtime rules of the Telegraphers' Agreement for each occasion on which employes not under the Telegraphers' Agreement have performed the afore-said duties and work at this station since October 1, 1949, claims were filed each day for a call, commencing October 1, 1949, by J. R. Watson, regularly assigned ticket agent-operator at this station, who has thus been deprived of doing this part of his work.

These claims have been declined by the Carrier.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, hereinafter, referred to as the Telegraphers' Agreement, bearing effective date of March 1, 1929, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

"The question before The Board is whether the position at South Schenectady, New York, given the title of Ticket Agent, performed routine work and that the Scope Rule of the Telegraphers' Agreement dated January 1, 1940 covers such work.

There is no dispute that the title given to the position at South Schenectady, New York, was Ticket Agent. However, this Board has held in Award 2138 that the title which is given to a position is not controlling, but of real importance in the type of work which the employe is called on to perform. The Board has also held in Awards Nos. 3003 and 3004 that the Scope Rule does not specify the work that falls within the Agreement, and in Awards Nos. 2138, 1078 and 1418 that the Scope Rule does not refer to work to be performed, but to a particular class of workers. Positions are not automatically bulletined as belonging under the Telegraphers' Agreement because of the title of the position, but only when the work to be performed could bring the position under the Agreement. **THESE ARE CERTAIN TICKET AGENT POSITIONS COVERED BY THE AGREEMENT, BUT THERE ARE ALSO SOME TICKET AGENT POSITIONS THAT ARE NOT COVERED BY ANY AGREEMENT.**" (Emphasis supplied.)

The Employes do not allege that they have the right to sell tickets for train 115 which arrives at Columbus in the early morning hours, and they make no distinction between the exclusive right to sell tickets for the early morning train and the evening train. Such a practice of not having an employe under the Telegraphers' agreement on duty for this early morning train has been in effect with the full knowledge of the Claimants and without protest for many years, during which time the current agreement has been revised in many respects. The Employes also show no necessity for the ticket agent to be called back for the evening train. No telegraphing service is necessary.

The Employes have not shown that the operator at Columbus has the exclusive right to sell tickets at that location. They have not shown that the agreement was violated when an employe under the Clerks' agreement is permitted to sell a trivial number of tickets and check baggage after the operator's regularly assigned hours.

The Clerks' agreement provides that employes covered by that agreement may sell passenger train tickets and, of course, check necessary baggage. There is certainly no contractual requirement under the Operators' agreement that the employe under that agreement at Columbus, Mississippi, be called back to work on an overtime basis to sell tickets and check baggage, and such work may be properly performed by an employe under the Clerks' agreement who is on duty at the time the few patrons call for their tickets.

Carrier respectfully requests that this claim be declined.

OPINION OF BOARD: At Columbus, Mississippi, the Carrier maintains a passenger station and, either a block away or in the same block but in a separate building, a freight office. Only one passenger train passes through Columbus each day at 5:41 A. M. and at 7:50 P. M.

The work in dispute is selling tickets, checking baggage and receiving the arrival time of the train over the telephone from the Train Dispatcher for the purpose of posting it on the station bulletin board, all in connection with the arrival of the passenger train at 7:50 P. M. Apparently no one ever gets on or off this train at 5:41 A. M.; but if they do, the work in dispute here is not among the services accorded to them at this station.

The work in dispute has been performed by the Telegraphers for 30 years, the detail of which is shown in the joint submission. Effective October 1, 1949 a Clerk outside the Agreement in the freight station has been assigned this work within the regular hours of his week-day assignment; and he has been given a call to perform the work on Saturday and Sunday. This reassignment has deprived the Ticket Agent-Operator of a call which that

position has been performing since 1939 outside its regular assigned hours of 7 A. M. to 4 P. M.

It does not appear that the new assignment was actuated by any change in the amount or nature of the work required. The substance of what has happened is that before the establishment of the 40-hour week the work was performed entirely by calls on an employe under the Telegraphers' Agreement, whereas now it is performed five days during the regular assigned hours of a Clerk outside the Telegraphers' Agreement and during his two rest days by calls.

FIRST: It is clear that receiving the arrival time of the train over the telephone from the Train Dispatcher, for the purpose of posting it on the bulletin board, was exclusively telegraphers' work. It was "telephoning in connection with the movement of trains" within the meaning of the Scope Rule, Article 1 (c), which in terms provides that such work can be performed only by those covered by the Agreement (Award 3900).

SECOND: The rest of the work in dispute—selling tickets, checking baggage, marking up the bulletin board and other related work in connection with the arrival and departure of the train—is technically clerk's work. But it has been long and firmly established that most employes of a carrier of necessity perform some clerical work in connection with their regular assigned duties, and that telegraphers with telegraphic duties to perform have the right to perform clerical duties to the extent necessary to fill out their time, provided the clerical duties are incidental to, or in proximity with, their work as a telegrapher (Awards 615, 636, 4559 and 4734; compare Awards 4288, 4867, 5014, 5024 and 5110).

THIRD: It is true that, since the rest of the clerical work in dispute had to be performed outside of the Claimant's regular assigned hours, it was neither "necessary to fill out his time" nor was it in as close proximity to his work as to that of a Clerk on duty in the freight station.

However, the Claimant was exclusively entitled to perform the work of receiving the arrival time of the train over the telephone from the Train Dispatcher, and so he was entitled to a call for that purpose in preference to one working in a different craft. This being the case, he would be in closer proximity to the rest of the work than the Clerk and so should have been permitted to fill out his time during the call by performing all of the work in connection with the arrival and departure of the train.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of March, 1951.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Interpretation No. 1 to Award No. 5281

Docket No. TE-5227

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: Gulf, Mobile and Ohio Railroad Company.

Upon application of the Carrier involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The application is based upon the claim that the Clerk outside the Agreement, who was given the call, did not in fact perform any communications work during the calls; and the application is accompanied by affidavits to this effect.

While the submission is joint, the parties submitted separate statements of fact. In considering these statements, we concluded that a conflict existed, which we resolved in favor of the Claimant.

The Employes' statement averred that communications work was performed during the call. While the Carrier denied that this was so during the Clerk's occupancy of the call, the denial was not categorical for it was accompanied by what we considered to be an admission that the Clerk may have performed some communications work.

Communications work was a duty of the Ticket Agent-Operator position; and the call was a call to perform the work of that position. To say that the Clerk never did perform communications work is not to say that the obligation to do so did not exist should the occasion arise. In this view, assuming that we have authority to consider the affidavits submitted with this application, they would not alter the ultimate conclusion reached in the Award.

Referee Hubert Wyckoff, who sat with the Division as a member when Award No. 5281 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: A. I. Tummon
Acting Secretary**

Dated at Chicago, Illinois, this 7th day of September, 1951.

[1271]