

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That Carrier violated and continues to violate currently effective Agreement dated July 1, 1924, when, effective September 1, 1949 and December 5, 1949 it unilaterally removed work of calling crews by employees included within the Scope Rule 1 of said Agreement and assigned such work to be performed by employees without the Scope Rule 1 thereof at Cheyenne Junction, Wyoming.

2. (a) That Carrier restore work of calling crews to employees within the Scope Rule of our Agreement, and

(b) That Carrier compensate involved employees, namely E. L. Syferd, regularly assigned Crew Caller, on the 3 A.M.-11 A.M. shift, as also other involved employees who may have worked on Syferd's trick occasioned by the latter's absence on his designated rest days, etc., for wage losses sustained, i.e.:

1. One call for each day crew for train 29 was called by employees without the Scope Rule of our Agreement retroactive to September 1, 1949.

2. One call for each day crew for the first switch engine was called by employees without the Scope Rule of our Agreement, retroactive to December 5, 1949.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949 there were three Yard Clerks assigned at Cheyenne Junction, Wyoming, as follows:

1st Trick	8:00 A. M. to 4:00 P. M.
2nd Trick	4:00 P. M. to 12:00 Midnight
3rd Trick	Midnight to 8:00 A. M.

On September 1, 1949 the third Trick position was abolished and the hours of the two remaining Yard Clerks were changed as follows:

One Yard Clerk	11:00 A. M. to 7:00 P. M.
One Yard Clerk	3:00 A. M. to 11:00 A. M.

CARRIER'S STATEMENT OF FACTS AND POSITION: On August 7, 1930, the General Chairman of the Brotherhood of Railway Clerks filed a claim with the Superintendent of The Colorado and Southern Railway Company in regard to the assignment of work of various clerical positions at the Cheyenne Station, requesting a proper classification and rate of pay for the assignments. This claim included a claim for clerk's rate of pay for a trucker, account using the trucker to call crews and, also, this trucker was being used to load and unload mail and baggage from passenger trains. The trucker was used to call crews when yard clerks were not on duty. This consisted largely of calling crews for passenger trains. During the discussion of these claims, arrangements were made to discontinue the use of the trucker in calling train crews and assigning the calling of the crews to the ticket clerk and telegrapher.

From then on until heavy traffic during World War II necessitated the use of additional yard clerks, telegraphers called crews when yard clerks were not on duty, assisted occasionally by the ticket clerk. There were no further protests from the clerks after this arrangement had been made. In connection with the balance of the claims submitted in the General Chairman's letter of August 7, 1930, a joint check was made at Cheyenne by the General Chairman and a representative of the Company, following which a satisfactory settlement of the balance of the claims was finally reached and the claims closed out.

Prior to September 1, 1942, there were two yard clerks assigned at Cheyenne and, as stated above, when World War II traffic increased business, a third yard clerk was added on or about September 1, 1942. This third trick position was continued until September 1, 1949, and the third yard clerk was then discontinued and the other two yard clerks' hours were re-assigned. Following the discontinuance of the third trick position on or about September 1, 1949, telegraphers were again used to call crews principally for passenger trains, following the arrangements which were made in connection with the General Chairman's claim of August 7, 1930, and which at that time was satisfactorily disposed of.

If it had not been for the increase in war traffic and had business remained normal, telegrapher would have continued to call crews principally for passenger trains the same as they had been doing for a number of years previous to the assignment of the third trick yard clerk, in line with arrangements which were made in the discussion and disposal of claims in the General Chairman's letter of August 7, 1930.

In view of the fact that the General Chairman questioned the right of Carrier using a trucker for calling crews in August of 1930 and the arrangements which were made at that time to have either the telegrapher or the ticket clerk perform this work, and in view of the fact that crews were called from that time on until a third yard clerk position was established to take care of the increased traffic by telegraphers, the Carrier does not feel that it violated the Agreement when it restored the calling of crews when yard clerks were not on duty to the positions that were calling the crews during periods that yard clerks were not on duty. The Carrier feels that the matter was satisfactorily disposed of in the claim of August 1930 and it now has the same right as it had then to use the telegrapher or ticket clerk for this purpose.

The General Chairman, in discussing this case, referred to certain Board awards. We do not feel those Board awards are controlling, in view of the disposition of the matter following the claim and protest August 1930, therefore, request that your Board deny this claim.

OPINION OF BOARD: This claim is advanced by the System Committee of the Brotherhood, hereinafter called Petitioner.

When the Chicago Agreement went into force and effect Carrier abolished, at the location here involved, the job styled second trick yard clerk.

At the same time Carrier rearranged the duty hours of the first and third tricks so that between 7:00 P. M. and 3:00 A. M. no yard clerk was on duty and directed a telegrapher to call the crew for train No. 29 during such time. Subsequently or on or about December 1st Carrier directed a telegrapher to call the first switch engine crew during such time. Petitioner avers each of said acts on the part of Carrier to be repugnant to the Schedule scope rule and outside of the job assignment of the abolished second trick job. Carrier contended said scope rule by its terms did not grant to its employees the exclusive right to protect the work in question and that by custom and practice the work had never been exclusive to a single craft.

Before discussing this case we note Petitioner emphasizes the point we are not concerned with conditions prevailing at other than the location in question. We find nothing contrary thereto in the claim.

A scope rule similar to the rule here before us was before the Board in Award 5604 (1951). In that case the Board held the rule did not describe the work but only referred to the classes of work. This brings us to that portion of the above Award wherein it is stated, "where a contract is negotiated and existing practices are not abrogated or changed by its terms such practices are enforceable to the same extent as the provisions of the contract itself." Was there a practice or a custom in the matter before us? The second trick bulletin is silent with reference to giving the bidder the exclusive right to protect the work therein described and in particular crew calling. By reference to Employees' Exhibit "G" it is not certain whether clerks did all of the work while the second trick was in existence.

The record does reflect telegraphers did perform the work prior to the establishment of the abolished second trick. We cannot escape the conviction that at all times telegraphers participated in the work.

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

The evidence of record fails to sustain an affirmative finding.

AWARD

For the reasons set out in the above and foregoing Opinion and Findings this claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.