

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**

LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. Carrier violated currently effective Agreement governing the hours of service and working conditions of the Employees when on or about May 23, 1950, without conference or agreement, it unilaterally discontinued a position embraced within the Scope Rule of said Agreement, namely, Cashier at Hope, Arkansas, and assigned the duties normally and traditionally attached to said position to employees without the scope of said Agreement.

2. That the position of Cashier at the Hope, Arkansas, station be restored, and

3. That the regularly assigned occupant of the position as of May 23, 1950, be reimbursed for all wage loss sustained since date of his arbitrary removal therefrom on May 23, 1950, to the date he is restored to said position.

EMPLOYES' STATEMENT OF FACTS: Prior to May 1, 1950, the station force at Hope, Arkansas, consisted of the following positions:

- 1 General Agent (no definite assigned hours of service)
- 1 Cashier (8:00 A. M. to 5:00 P. M. Monday to Friday—Saturday and Sunday rest days)
- 1 Telegraph Operator (4:00 P. M. to midnight)
- 1 Telegraph Operator (midnight to 8:00 A. M.)

On or about May 1, 1950, the Carrier augmented its station force by the employment of an additional Telegraph Operator, working first shift 8:00 A. M. to 4:00 P. M.

On or about May 23, 1950, Carrier, by unilateral action, nominally abolished the full-time Cashier's position and distributed the work normally and traditionally theretofore assigned to this position to other employees at the station without the scope of our Agreement with the Carrier.

On June 2, 1950, the Carrier's action as heretofore set forth was protested to the Carrier's Superintendent at Shreveport and formal monetary claim

charged to Operation; therefore, he is the Station Agent in fact, and as such has always participated in and is required to participate, actively, in all station work and activities. This you confirm in your letter (Sheet 5).

"It has been recognized by the National Railroad Adjustment Board and other tribunals handling labor disputes, even under Federal Control—1918-1920—that under certain conditions, where there is not sufficient work for two positions and part of the work is telegraph work, the clerical work can be combined with the telegraph work and be performed by a telegrapher. This is fully set forth in NRAB Awards 615, 809 and 1868. While there have been some other awards where claims have been sustained, we do not believe they cover cases similar to this case and therefore are not applicable here.

"Denial of claim is reaffirmed."

"Yours very truly,

(Sgd.) J. M. Prickett,
Vice President, L. & A."

* * * *

Position of Carrier appears to be sufficiently set forth in the foregoing correspondence. The fact that the L. & A. Telegraphers' Agreement has, for many years, carried in the tabulated wage scale an item designated:

Location	Position	Rate
Hope, Ark.	Telegrapher-Clerks	(Current)

is evidence that a combination of telegrapher and clerical duties has always been expected of these incumbents, and it is a matter of common knowledge that they have always performed clerical work of whatever nature the Agent called upon them to do. To contend at this late date that clerical work is exclusively the "property" of employees covered by the agreement with the Brotherhood of Railway Clerks, is, to say the least, belated and unrealistic.

The first L. & A. Telegraphers' Agreement of record became effective April 20, 1920.

The first Clerks' Agreement of record became effective July 1, 1921.

The position of Cashier was abolished by bulletin with the required 48-hours' notice, and the incumbent placed himself on a clerical position at another point carrying the same rate of pay.

The claim should be denied and Carrier respectfully requests that the Board so find.

Facts and data contained herein have been made known to representatives of claimant by correspondence or in conference.

(Exhibits not reproduced).

OPINION OF BOARD: The System Committee contends Carrier violated its Agreement with the Clerks when on May 23, 1950, without conference or agreement, it discontinued the position of Cashier at Hope, Arkansas, and assigned the duties normally and traditionally attached thereto to employees not covered by the Clerks' Agreement. It asks that the position be restored and that the regularly assigned occupant thereof as of May 23, 1950 be compensated for all wage loss sustained since his removal therefrom up until such time as he is restored to the position.

Prior to November 1, 1941 the station force in the office of the Freight Station at Hope, Arkansas, consisted of a General Agent, Cashier and three Telegrapher-Clerks. On November 1, 1941 a Check-Clerk was added to the force. As of December 3, 1948 the first trick Telegrapher-Clerk position was abolished. On February 10, 1949 the position of Check-Clerk established on November 1, 1941 was abolished although it was again temporarily put in effect from October 3rd to 31st, 1949. Because of telegraphic service requirements the position of first trick Telegrapher-Clerk was re-established on April 7, 1950. Due to a decline in business there was not enough work for the Telegrapher-Clerk and Cashier during the latter's tour of duty, so Carrier abolished the position of Cashier on May 23, 1950. It also reclassified a position of Telegrapher-Clerk as a Telegrapher-Cashier and had the occupant of that position perform all the duties which, prior thereto, the occupant of the position of Cashier had been performing. The position of Telegrapher-Cashier is not covered by the Clerks' Agreement.

Scope rules which cover classes of employes by referring to positions generally reserve to employes covered thereby all work usually and customarily performed by the occupants thereof at the time of the negotiation and execution thereof. In the case of Clerks' agreements it has been often stated that because of the nature of the work, it being incident to and a part of so many different positions, it does not purport to reserve all clerical work to clerks. Many awards of this Division also recognize certain qualifications thereof or exceptions thereto. However, clerks have the right to perform all clerical work in the absence of it falling within such qualifications or exceptions. See Awards 2334 and 3003 of this Division.

Insofar as here material these qualifications or exceptions include the right of Telegraphers to perform it to the extent necessary to fill out their time, although they cannot be detached from their posts and be sent elsewhere to perform it nor can the work be brought to them. See Awards 636, 4288, 4477, 4559 and 4867 of this Division.

As stated in Award 4559 " * * * this Board has said that a Telegrapher with telegraphic duties to perform may properly perform clerical work, which is incident to or in proximity of his telegraphic work, to such an extent as to fill out the telegraphic assignment."

The record establishes the necessity for the telegraphic positions. Under such circumstances a telegrapher may properly perform clerical work in proximity thereto to the extent required to fill out the position he occupies. If the work recedes to the point when the telegraphers can perform it all it is the clerks and not the telegraphers which must be cut off when telegraphic work remains to be performed. We find Carrier had a right to do what it did. See Award 4477.

Nor does the fact that the position of Cashier at Hope has been in existence for a long time, at least since prior to September 1, 1927, affect the application of these principles thereto in view of the scope rule of the Agreement which is herein involved.

In view of the foregoing we find the claim to be without merit.

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 evidences, 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 23rd day of May, 1952.