

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

(a) Carrier violated, and continues to violate, the scope and other rules of the Agreement between the parties when and because on December 19, 1949, acting alone, it arbitrarily reclassified the position of agent, located in its freight office at Thayer, Missouri, to that of agent-telegrapher; removed the position from its freight office to its passenger station at Thayer, displacing the first trick manager-telegrapher in the latter office, and transferred the supervisory and other duties belonging to and formerly performed by the agent in the freight office to an employee not covered by said Telegraphers' Agreement; and

(b) that the position of agent shall be restored, and the work of the position which was improperly transferred therefrom be restored thereto; and

(c) all employees adversely affected as a result of the Carrier's violative action shall be restored to their former positions, and be reimbursed for monetary losses suffered, including expenses incurred.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement hereinafter referred to as the Telegraphers' Agreement, bearing date of May 16, 1928, as to rates of pay and rules of working conditions, in effect between the parties to this dispute. Rates of pay have been increased subsequent to the effective date of the agreement.

Prior to December 19, 1949, the following hourly rated employees and assigned hours, under the Telegraphers' Agreement were employed at Thayer, Missouri.

Position	Assigned Hours	Rest Days	Hourly Rate
Agent	8:00 am to 5:00 pm	Saturday and Sunday	\$1.858
Manager-Telegrapher	7:00 am to 3:00 pm	Monday and Tuesday	1.63
Telegrapher	3:00 pm to 11:00 pm	Wednesday and Thursday	1.606
Telegrapher	11:00 pm to 7:00 am	Friday and Saturday	1.606

yard clerical and office force at Thayer. When the agent was handling freight accounts during the months of September, October and November, 1949, he was tied down with detailed clerical work, and was putting in a great deal of overtime. In November 1949, this overtime amounted to 80 hours. On the basis of a five day week in effect at that time, this would average almost four hours for each working day. He had little or no time to perform "supervisory duties" during that period, or other duties which he should have performed as agent.

Carrier has shown in its submission that there is no basis whatever for the claim here presented by the Employees and respectfully requests the Board deny the claim in its entirety for the following reasons as set out in Carrier's position:

(1) The claim is indefinite and general in nature, and the Employees have submitted no evidence to the Carrier of any violation of rules of the Telegraphers' Agreement; that portion of Part (c) of Employees' claim referring to expenses has never been presented to or handled with the Carrier and is not properly before the Board for consideration.

(2) Position of freight cashier established by the Carrier is a straight clerical position, the occupant is performing no duties which may be considered as belonging exclusively to positions subject to the Telegraphers' Agreement, and is performing the same duties that were performed by the cashier from June 29, 1943 to September 2, 1949, without complaint or protest of any kind from the Telegraphers' Organization.

(3) The assignment of telegrapher duties to the agent position at Thayer is in accordance with rules of the Telegraphers' Agreement and practice which has prevailed on this property for many years. The changing of the agent position from the freight station to the passenger station did not violate any rule in the Telegraphers' Agreement.

(4) Only one employe, the freight cashier, is assigned to work at the freight station and no supervisory duties were assigned to this position. The freight cashier does not supervise the work of any employe.

Further, Carrier has shown in its position that the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees have an interest in the dispute here presented, and if the Board is to adhere to principles laid down in Award 5432, Docket TE-5406, Carrier respectfully submits that a sustaining award may not be issued unless and until the Clerks' Organization is given an opportunity to appear before the Board and to be heard, and requests that, if for no other reason, claim here presented be dismissed or denied.

All data used in support of Carrier's position have been made available to or are a matter of record with the Employees, and are made a part of the question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 2, 1949, a freight cashier was employed at Thayer, Missouri. Effective September 2, 1949 the Carrier abolished the position of freight cashier and transferred the freight accounts to the position of agent. On December 19, 1949, the position of Freight Cashier was reestablished. Effective on completion of tour of duty on December 19, 1949, the position of First Telegrapher was abolished and on the next day the Agent was moved to the passenger station and assigned the telegraph duties, passenger ticket accounts and hours of the First Telegrapher.

The Organization strongly contends that this shifting of the Agent to the Agent-Telegrapher's position is an arbitrary change in working conditions and results in a less favorable condition of employment than that established by the Telegraphers' Agreement of May 16, 1928. This is based on the

allegation that the Agent was dispossessed of his agency duties which were not discontinued, but which were transferred to an employe not covered by the Telegraphers' Agreement.

The principal rules cited by the Organization in support of its claim are:

Article I, Section 1 (Scope)
Article II, Sections 1 and 3
Article XII, Section 5

The Agent was moved from the freight office to the passenger station, 600 feet distant. The duties which the Agent had performed, with the exception of making payroll, handling unemployment papers and issuing doctor's permits, were assigned to the Freight Cashier.

The question to be decided by this Board is whether the Carrier violated the Agreement between itself and the Telegraphers when it followed the course of action of December 19, 1949. Did the work, as performed by the Agent, from September 2, 1949 to December 19, 1949, become work to which the Agent was entitled exclusively by virtue of his position as Agent? We believe not. The work which the Agent performed at the freight house and which was later assigned to a Freight Cashier is not, nor did it become so integrated with the position of Agent that it could not be transferred to another party. The work in question was clerical work and involved no work which was exclusively telegrapher's work by either tradition or agreement.

The removal of the Agent from the freight office to the passenger station is not a violation of the agreement. Before the move was made, the Agent had jurisdiction over both the freight office and passenger station. This jurisdiction still existed after he moved from one building to another.

There have been situations similar to this where claims have been sustained. We are of the opinion that one of the controlling factors upon which a sustaining award would be justified is the duration of time that the work was performed by a particular craft or a member thereof.

The Carrier's contention that the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes have an interest in this matter and must be given an opportunity to appear before the Board is without merit.

We believe that the changes made, as here complained of, were not in violation of the Telegraphers' Agreement.

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 Carrier did not violate 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 18th day of July, 1952.

CONCURRING OPINION—AWARD NO. 5867, DOCKET NO. TE-5853.

We concur in this award because it has been correctly decided on its merits. It is valid and binding because the only party affected adversely, the Telegraphers, has had notice and an opportunity to be heard. However, we cannot agree with the referee's pronouncement that the Clerks have no interest in this matter. The referee's findings on the merits demonstrate that the Clerks were "involved" here, and if the claim had been sustained the award would have been null, void and unenforceable. See Third Division Award Nos. 1193, 1400, 5432, 5433, 5599, 5600, 5627, 5644, 5751, First Division Awards Nos. 14475, 14763, 14837, and 14903; Nord vs. Griffin, 86 F. 2d 481, cert. denied, 300 U. S. 673; Estes vs. Union Terminal Company, 89 F. 2d 768; Hunter vs. AT&SF Ry. Co., 78 F. Supp. 984, affd. 171 F. 2d 594; R. Y. of N. A. vs. I. H. B. Co., 166 F. 2d 326; B. of R. T. vs. Templeton, 84 F. Supp. 152; M. K. & T. R. R. vs. B. of R. S. S. C., 188 F. 2d 302.

(s) J. E. Kemp

(s) C. P. Dugan

(s) W. H. Castle

(s) R. M. Butler