

Award No. 6052

Docket No. CL-6081

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
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 the Clerks' Agreement when, effective May 19, 1950, it unilaterally abolished a regular scheduled position of Night Ticket Clerk, rate \$267.17 per month at Enid, Oklahoma, and transferred the work normally attached to that position to employees not covered by the Clerks' Agreement.

(2) That the scheduled position of Night Ticket Clerk at Enid, Oklahoma be restored; and

(3) That O. W. Hern, who was displaced from his regular assigned position of Night Ticket Clerk by Carrier's unilateral action, set forth in Section (1) hereof, and also any other employees affected, be reimbursed for wage losses sustained, retroactive to May 19, 1950.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 9, 1947, the assigned hours of the three (3) Ticket Clerks at Enid, Oklahoma, were as follows:

Day Ticket Clerk	8:00 A. M. to 12:00 Noon 1:00 P. M. to 5:00 P. M.
Second Trick Ticket Clerk	11:30 A. M. to 3:00 P. M. 4:00 P. M. to 8:30 P. M.
Third Trick Ticket Clerk	7:30 P. M. to 11:30 P. M. 12:30 A. M. to 4:30 A. M.

graphic work, to such an extent as to fill out the telegraphic assignment. See Awards 4288, 4355, and 4477 of this Division. As stated in Award 4477:

'When the work of clerks exceeds that which the telegrapher can perform and it became necessary to increase forces, the excess clerical work belongs to clerks and must be assigned to them. If the work recedes to the point where 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.'

On this Carrier, through custom and usage, it has been the practice to have Telegraphers do ticket selling in connection with their telegraphic duties, thus creating an exception to the Clerks' right to the exclusive performance thereof. Of course, the parties can provide otherwise by their agreement. The parties' Agreement effective August 2, 1945, provides in part, as follows:

Rule 1—Section 1. Scope—'These rules shall govern the hours of service and working conditions of the following employees subject to the exceptions in Section 2.'

'Group 7. * * * Ticket Clerks (Sellers).'

Rule 1—Section 2 (k) 'The changing of the title of a position without actual reclassification of the duties assigned will not operate to remove the position from the scope of this schedule, unless by mutual agreement between the railway and representatives of the employees.'

In view of these provisions and an examination of the Agreement as a whole, particularly Interpretation 2 to Rule 69, we do not think the parties, by their Agreement, have contracted to prohibit the Carrier from assigning some of the remaining duties of Ticket Clerk No. 2 to a Telegrapher which, by long continued practice and custom, this Carrier has always done." (Emphasis added.)

Inasmuch as this claim is without support in the Agreement and in the light of prior Awards of your Board, we respectfully petition the Board to deny the claim.

OPINION OF BOARD: Decision in the claim is governed by our Award 6051, Docket TE-5827, which follows Awards 5432, 5433, 5599, 5600. Notice was not given to all interested parties involved in this dispute in conformity with Section 3, First (j) of the Railway Labor Act.

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

That this claim should be dismissed without prejudice in accordance with Opinion and Findings.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1953.

DISSENT TO AWARD No. 6052, DOCKET CL-6081.

We dissent.

/s/ J. H. SYLVESTER

/s/ G. ORNDORFF

/s/ C. R. BARNES

/s/ J. W. WHITEHOUSE

/s/ ROGER SARCHET