

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(a) The Baltimore and Ohio Railroad Company violated the Agreement between the parties when, on November 7, 1949, it abolished position of Ticket Clerk #79-1-222 at its Hamilton, Ohio, Passenger Station, which was regularly assigned to Ticket Clerk L. L. Stevens, and reassigned the 8 hours of of work per day attached thereto to a Ticket Agent, an employee covered by the Telegraphers' Agreement; and

(b) That Ticket Clerk L. L. Stevens and/or his successors, and all others adversely affected, be compensated for all monetary losses sustained on November 7, 1949, and subsequent thereto until the position is restored and work reassigned in accordance with the Agreement.

EMPLOYES' STATEMENT OF FACTS: Prior to July 23, 1949, the forces employed at the Passenger Station at Hamilton, Ohio, consisted of the following:

Position	Assigned Hours	Assigned To
Ticket Agent (Telegrapher)	8:00 AM to 5:00 PM	Dan Evans
Ticket Clerk (79-1-222)	8:45 AM to 5:45 PM	L. L. Stevens
Ticket Clerk (791-221)	4:15 PM to 1:15 AM	C. E. Beiser
1 Trucker	5:30 AM to 2:30 PM	Roy McQueen
2 Truckers	7:30 PM to 11:30 PM	Unassigned

The Ticket Agent's position is covered by the scope and application of the Telegraphers' Agreement. The two Ticket Clerks and three Truckers are covered by Rule 1 of the Clerks' Agreement, the Clerks being covered in Group 1 and the Truckers covered by Group 3.

Effective July 23, 1949, the position of Ticket Agent, coming under the scope and application of the Telegraphers' Agreement, was abolished and the small amount of clerical work which the Agent had performed was rearranged

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."

The Carrier asserts that this Division has no authority to make any order directly, or by indirection, issue any verdict the net effect of which would be to compel the Carrier to establish position or positions where none now exist.

In view of all that has been said hereinabove, the Carrier submits that the instant claim is without merit and respectfully requests this Division to deny it accordingly.

In accordance with the requirements contained in this Division's Circular No. 1, issued October 10, 1934, the Carrier submits that all data in support of the Carrier's position in this case has been presented to or is known by the other party to this dispute.

(Exhibits not reproduced)

OPINION OF BOARD: Petitioner contends that in the nominal abolishment of the Ticket Clerk position on November 7, 1949, Carrier by subsequent action violated the Agreement, specifically Rule 1(c)1 which provides as follows:

"Rule 1

(c) When a position covered by this agreement is abolished, the work assigned to same which remains to be performed will be reassigned in accordance with the following:

1. To position or positions covered by this agreement when such position or positions remain in existence at the location where the work of the abolished position is to be performed."

And further contending that since another Ticket Clerk position remained at this location the Carrier had no alternative but to reassign all of the remaining work of the abolished position thereto. That this was not done and the reassigning of the work remaining was made to the Ticket Agent, who was not covered by the applicable Agreement and who did not hold seniority rights thereunder.

Respondent Carrier contends that its Hamilton, Ohio Station is in charge of the Ticket Agent who is under the Telegraphers' Agreement. And by reason of a decrease in business the Ticket Clerk position was abolished and as an Agent is entitled to perform all work attached to the agency position the work remaining was taken over by the Agent. This on the theory that when work falls off and additional employees are not longer needed, the work flows back to the Agent. Also that the remaining work involved is common to both types of employees.

Letter of July 20, 1950 from Claimant Stevens is cited as largely confirming Carrier by reason of his reply to a letter from his Division Chairman relative to type of work performed. That the claim is an effort to compel the employment of two workers where there is only one job to be done.

Respondent Carrier also urges a jurisdictional point relative to lack of notice to the third party involved and to his representative, the Order of Railroad Telegraphers. On behalf of Carrier an extensive brief is filed citing awards and Federal Court cases on this point.

This claim involves the same rule as was under consideration in Award 6527. As stated in that Award the provisions of Rule 1 (c) 1 are clear and unambiguous. Carrier contracted to follow a stated method in reassigning remaining work of an abolished position. The facts here show that this was not done. And the facts also show that under the situation here presented the "ebb and flow" principle does not apply.

The jurisdictional question presented herein is not well founded. On this record a specified method of handling such situations is carefully spelled out in the cited rule. And as said in Award 6527 we are not taking a position away from any person therefore we have the persons "involved" and the subject pertaining thereto before us in the instant claim. To say that any position or property right is affected is purely speculative and is in the realm of conjecture.

Except as to restoring position the claim must be sustained and the involved work reassigned in accordance with the agreement. However, reparation is limited to the named Claimant. Also deductions for any outside earnings of Claimant are to be computed and deducted.

On the record it does not appear that other employees were adversely affected, or if such was the case it is not clearly shown to an extent to be intelligently passed upon. See Award 6486.

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 claim is sustained in accordance with Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.