

Award No. 7198

Docket No. CL-6993

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

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

1. The Carrier violated the terms of the Clerks' Agreement when, effective April 16, 1953, it abolished a regular scheduled position of Ticket Clerk, rate \$305.36 per month at Waterloo, Iowa, and transferred the work normally attached to that position to three (3) employees not covered by the Clerks' Agreement.

2. The Schedule position of Ticket Clerk at Waterloo, Iowa, be restored; and

3. E. A. Tarpy, who was the assigned Ticket Clerk at the time the position was abolished, be paid for all time lost at Ticket Clerk's rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 16, 1953, the Day Ticket Clerk position was a regular seven (7) day per week assignment, assigned hours 8 A. M. to 12 noon and 1 P. M. to 5 P. M. Rest days were Saturday and Sunday, and a regular assigned relief clerk worked the Ticket Clerk position on the rest days of the regular Ticket Clerk, Saturday and Sunday.

April 2, 1953, Assistant Superintendent served the following notice on the Ticket Clerk, with copy to the Division Chairman:

"Waterloo, Iowa, April 2, 1953

Title of Position:	Ticket Clerk	Incumbent: E. A. Tarpy
Station	Office	
Location: Waterloo, Iowa	Location	Ticket Teleg. Office
		Rate: \$305.00 per mo.

Assigned Hours:	8 A-12 N	Days	Date position
	1 P- 5 PM	Week	7 to be abolished 4-15-53

Therefore, in concurrence with all of the preceding, we respectfully petition that you, in your final consideration of this dispute, render a denial Award.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

OPINION OF BOARD: Before considering this dispute on its merits, it is necessary to dispose of a motion in this docket to the effect that action be withheld pending the giving of notice of hearing to other parties involved.

In view of a number of awards of this Board and the decision of the Supreme Court of the United States in the case of Whitehouse vs. Illinois Central Railroad, and the finality of this matter (No. 131, October Term of U. S. Sup. Ct., 1954), followed by the dismissal of the cause of action by the United States District Court, the Board now has jurisdiction over the only necessary parties to this proceeding and over the subject matter hereof. Prior Award 5759 of this Board was ill advised.

This claim concerns the allegation that the position of Ticket Clerk, Waterloo, Iowa, held by the Claimant, was improperly abolished, the work of said position remaining, but subject to assignment to employes not covered by the effective Agreement. Request is made that the work be restored to the position of Ticket Clerk, with reparations to the Claimant, at the Ticket Clerk's rate of pay for all time lost.

The position in question has scheduled hours 8:00 A. M. to 5:00 P. M. (including lunch period), Monday through Friday, with Saturday and Sunday as rest days.

The Organization asserts that the duties of Ticket Clerk have been considered as clerical of nature since 1917 and that the position of Ticket Clerk has been listed as a position coming within the Scope Rule of the Agreement during a period of time in which four revisions of the Agreement were achieved; thus clearly demonstrating that ticket selling work had become and remained the exclusive work of Clerks. It was further argued by the Organization that an admitted 6 hours and 40 minutes of clerical work remained after the Ticket Clerk position was abolished, which could have been assigned to clerical positions at the freight office of the Carrier.

Respondent here countered that there had been an uninterrupted decrease in revenue and train service over the years to the extent that the Ticket Clerk position here was no longer required. It was contended that prior to or during the early Twenties round-the-clock Telegraphers had performed all "ticket work" at this station, it (ticket work) having been assigned to and performed by Clerks, as such, only when the volume of such work increased to the extent that it (ticket work) could no longer be performed by Telegraphers as work incidental to their telegraphic duties.

While the record is clear that all ticket work has been assigned to and performed by Clerks for a number of years, it is likewise clear that such work had initially been done by Telegraphers and had been assigned to Clerks classified as Ticket Clerks (two positions) when the volume of this type of work required. The Organization does not successfully refute the contention that at the present time the need and necessity for ticket clerks had diminished. The correctness of the contention is borne out by the fact that one ticket clerk position was abolished prior to the instant case. It is likewise apparent that only one train is scheduled during the assigned hours of this ticket clerk assignment.

Awards 1300, 4812, 4559 and 6284, each involving the parties and the Agreement before the Board, have been cited here.

It appears to the Board that Award 4559 is particularly applicable here, wherein it is stated:

"This Board has often said that there are few, if any, employees of a carrier, from the president on down, who do not perform some clerical work in connection with their regularly assigned duties; that the performance of such clerical work incident to a position by the occupant thereof who is not within the scope of the Agreement is not in violation thereof; and that if the clerical work incident to a position increases and is assigned to a position under the Clerks' Agreement and performed by the occupant thereof, then, if it decreases, Carrier may abolish the position and return the remaining work to the position from whence it came and to which it is incident. That is, clerical work incident to a position outside of a Clerks' Agreement may flow from such position to positions under the Clerks' Agreement and then, if it decreases, back to the position to which it is incident. * * *"

We then come to the question of assignment to these clerical duties remaining (other than specific ticket selling duties) at the time the ticket clerk's position was abolished. We are cited Interpretation No. 2 of Rule 69. A close scrutiny of the facts of record in this particular case does not indicate a misapplication of the Interpretation of this Rule.

A part of the said Interpretation specifies:

"* * * it being understood that the remaining work will, so far as possible, be returned to the position or positions in the station, yard or office from which it originated."

The ticket selling work here originated at the Passenger Station. The clerical positions remaining are at the Freight Station, a considerable distance away. The abolished ticket clerk position was the only one that existed at the Passenger Station. No clerk remained to whom the remaining duties could be assigned.

The Board properly stated in Award 615 (subject to the limitations as to the locale of the work performance in Award 636) that:

"* * * It has always been the rule that telegraphers may be assigned clerical work without limit except their capacity to fill out their time when not occupied with telegraphy. * * *"

So, therefore, a sustaining award in this instance is not justified.

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 Employee involved in this dispute are respectively Carrier and Employee 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 the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 16th day of December, 1955.