

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

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**PARTIES TO DISPUTE:**

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

**ILLINOIS CENTRAL RAILROAD COMPANY**

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

1. That the Carrier violated the Agreement when effective May 1, 1949, it did without agreement, arbitrarily and unilaterally assign to telegraphers the duties in connection with the sale of tickets for Minneapolis and St. Louis train No. 4.

2. That the Carrier violated and continues to violate the Agreement when, effective August 1, 1949, it did without agreement, arbitrarily and unilaterally assign to telegraphers all duties in connection with the sale of tickets each day between the hours of 10:30 P. M. and 1:30 P. M.

3. That C. J. Olson be compensated two hours pay at the penalty rate each day from May 1 to August 1, 1949, account the violation referred to in part (1) of claim.

4. That C. J. Olson be compensated eight hours pay each Sunday beginning on August 7, 1949 and each subsequent Sunday thereafter, until the condition is corrected that telegrapher performs ticket clerk duties on Olson's position on Olson's rest day.

5. That B. H. York, his successor and/or relief be compensated a day's pay at pro rata rate on August 1, 1949 and each subsequent date thereafter until condition is corrected, account of violation referred to in part (2) of claim.

**EMPLOYES' STATEMENT OF FACTS:** There is in effect between the Carrier and this Brotherhood a rules Agreement effective June 23, 1922, as subsequently amended, covering the craft and class of clerical, office, station and store employes, which Agreement has been filed with the National Railroad Adjustment Board as provided in the Railway Labor Act as amended, and this Agreement will be considered a part of this Statement of Facts.

The passenger depot at Fort Dodge, Iowa, in which the ticket office is located was built in year 1912. It followed then that from the year 1912

tickets had not been assigned to the clerks. In Award 4059 the work of selling tickets was a seven-day job necessary to the continuous operation of the railroad and the work having been assigned clerks, they had a right to it the full seven days. But here we have never had a seven-day assignment for the cashier. And likewise in Award 4477 the essential finding was that the position was a seven-day one.

"On the other hand, where the Board has found that the work of ticket clerk had not passed under the exclusive protection of the Scope Rule of the Clerks' Agreement, it has permitted the assignment of such work to telegraphers on Sundays and holidays (Award 4355). In the case now before the Board, the work of selling tickets was given to employes covered by the Clerks' Agreement on their assigned days, and others performed the same work outside of the assignment. In principle, there is little distinction between one unassigned day and two such days. We must, therefore, find that under the facts here shown the claim is not valid. This decision is based on the factual situation here presented and is intended only to apply thereto."

Summarizing, it is the position of the Carrier that this claim should be denied or dismissed because of the unreasonable delay in handling by the Organization to the detriment of the Carrier, in violation of the intent of the Railway Labor Act, that paragraphs 1 and 3 of the claim have never been handled on the property and should be dismissed, and that the claim in its entirety should be dismissed, unless the Telegraphers' Organization is given due notice of hearing and permitted to participate therein. Without prejudice, it is the position of the Carrier that there has been no violation of the agreement, and claim should be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced)

**OPINION OF BOARD:** This dispute arose at Fort Dodge, Iowa, a terminal point on Carrier's Iowa Division. The facilities involved were a freight station and a passenger station which were about a block apart. Prior to 1932, the telegraph office was maintained above the freight station where 24-hour telegraphic service was maintained. The ticket office was maintained in the passenger station where an agent and two ticket clerks were assigned. In 1932, the three telegraphers were moved into the ticket office and the ticket clerk positions were abolished, the telegraphers doing all of the ticket work in connection with their own duties. A ticket clerk position was established in 1936, another in 1942, and a third in 1943. The telegraphers were then moved back to their former freight station offices. In 1949, the third ticket clerk position was abolished and the hours of the other two positions were changed to 7:30 A. M. to 3:30 P. M. and 3:30 P. M. to 11:30 P. M. In August 1949, the three telegraphers were again moved to the ticket office where they resumed the selling of tickets. One ticket clerk position was abolished and the other assigned 1:30 P. M. to 10:30 P. M. Claimant C. J. Olson seeks a day's pay for every Sunday beginning August 7, 1949, that telegraphers sold tickets on his Sunday rest day, relief having been provided on Saturdays. Claimant B. H. York seeks a day's pay for each day that telegraphers were permitted to sell tickets between 10:30 P. M. and 1:30 P. M. when no ticket clerk was on duty.

The record shows that this claim was not expeditiously handled by the parties. There is nothing in the record to show that the Carrier resisted the claims on the property on such grounds. It raises the issue for the first time before this Board. By failing to object to the claim because of unreasonable delay and in not setting up the delay in handling as a basis for

its denial, it will be presumed that the delay was waived. Unreasonable delay in the handling of a claim on the property must be asserted there the same as any other defense. The claim appears to have been finally declined on April 26, 1954 and the notice to file the claim before this Board was given on March 22, 1955. We cannot say that the taking of the appeal was unreasonable as to time. Award 7074.

We shall deal first with the claim of B. H. York based on the use of telegraphers to sell tickets from 10:30 P. M. to 1:30 P. M., Mondays through Saturdays, and all day on Sunday. We agree with the Organization that the selling of tickets is ordinarily the work of clerks. It is subject to the rule, however, that where the services of a telegrapher are required the latter may perform clerical work to the extent necessary to fill out his time. This has been the rule on this Carrier, the evidence showing that ticket selling has been performed by clerks and telegraphers, and that it is not, therefore, the exclusive work of either. This rule has become so embedded in the holdings of this Board that a departure from it would produce a chaotic condition in the work of this Board.

This dispute arises out of the Carrier's action in consolidating the telegraph office with the ticket office. This is, of course, a management prerogative. Consequently, when the consolidation was effected and it was determined that a reduction of force was necessary, the clerical employees are the first to be cut off under the consistent holdings of this Board, beginning with Award 615. The contention that the telegraphers had no right to perform ticket selling work within the hours of their assignment cannot be sustained.

Claimant Olson contends that he should have been used on Sundays, one of the rest days of his assignment. It appears that Olson was assigned Monday through Friday, with Saturday and Sunday as rest days. Saturday was worked by a regularly assigned relief man. The Sunday ticket selling work was handled by the telegrapher on duty. It is the contention of the Organization that this clerical work cannot properly be performed by a telegrapher.

It has been held by this Board in many awards that the scope rule of the Agreement does not describe the work within it. It sets forth the classes of positions to which it applies and the work actually included within its scope is determined by that work which is customarily and traditionally performed on the positions described therein. Ticket clerks are not named in the scope of the Clerks Agreement. Historically on this Carrier, Clerks and Telegraphers have handled ticket work. The record shows such to have been the case as far back as 1912. It is clearly established that ticket selling is not the exclusive work of the Clerks. It is shown by this record, also, that Clerks and Telegraphers have worked together over the years in handling tickets and each has been assigned to sell tickets in the absence of the other. Under these circumstances, we fail to find any valid reason why a telegrapher cannot sell tickets on his regular assignment, whether or not a clerk is working on the same day on the same shift. The long practice on this Carrier, which permits telegraphers to sell tickets on their regular assignments, justifies the Carrier's action in this present case. Ticket selling is not the exclusive work of clerks at Fort Dodge, Iowa, where this claim arose. The claim of Olson is without merit. Awards 5509, 6758, 7111, 7133.

With reference to paragraphs 1 and 3 of the claim, the record shows the following: The Organization asserts that on May 1, 1949 and until August 1, 1949, the third trick telegrapher was required to leave his office in the freight station and go to the ticket office and sell tickets for Train No. 4 arriving at 4:05 A. M. The record shows that Train No. 4 had been taken off and another train put on which arrived during the assigned hours of the two ticket clerks. The Carrier claims that this alleged violation was never handled on the property. The error undoubtedly would have been found and corrected if a proper handling had been had. We necessarily conclude that

the Organization has not established that a telegrapher was required to leave his office in the freight station to work Train No. 4 between May 1, 1949 to August 1, 1949.

We find no basis for holding that the Agreement was violated as alleged in the claim.

**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 the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May, 1956.