

Award No. 7356
Docket No. CL-7309

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

STATEMENT OF CLAIM: The claim of the Carrier is that the following claim, which was submitted to the Carrier by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, is without merit:

* * * claim filed for in behalf of Ticket Clerk W. M. Shook, Sweetwater, Texas, account Carrier violating and continuing to violate the Clerks' Agreement when on June 18, 1953 it abolished Ticket Clerk position W-925 at Sweetwater and assigned work on this position to telegraphers, employees of another craft or class.

CARRIER'S STATEMENT OF FACTS: Persons covered by the Telegraphers' Agreement handled ticket matters and other clerical duties at Sweetwater, Texas, long before the Carrier had a contract with the Clerks' Organization and they have continued to do so ever since the Carrier has had a contract with the Clerks' Organization. From 1931 to 1942 there were no ticket clerks at Sweetwater, and the operators handled ticket work, including reports in connection therewith. During World War II, a ticket clerk position was established at Sweetwater to assist the operators, and perform other duties; but the telegraph operators were never relieved of the duty nor deprived of the right to handle ticket matters, and they have continued to handle them at all times. A second ticket clerk was put on for only about a year during World War II. The remaining ticket clerk position at Sweetwater was abolished on June 18, 1953, after a ninety day analysis showed only six to ten tickets were being sold in each 24-hour period.

W. M. Shook was ticket clerk at Sweetwater from 1942 until the position was abolished effective on June 18, 1953. On June 23, 1953, he displaced another employee at Sweetwater, and he has been, and still is, employed there. He made no protest when the job was abolished, and has not, personally, made any claim in connection with this case. The claim made by the Organization was dated October 7, 1953.

Since June 18, 1953, ticket matters at Sweetwater have been handled by the operators, and the other duties formerly performed by the ticket clerk have been distributed among other employees who are covered by the Clerks' Agreement. No complaint is made as to the distribution of the other duties;

"It is a fundamental rule that work of a class covered by an agreement belongs to those for whose benefit the contract was made. A delegation of such work to others not covered by the Agreement is in violation of the Agreement except as the parties in their Agreement may otherwise provide. See Awards 360, 1300 and 1647 of this Division.

"When work is within the scope of a collective agreement and not within an exception contained therein or any exception recognized by the Board as inherently existent, that work belongs to the employees under the Agreement and may not be taken therefrom with impunity. See Award 4513 of this Division."

We have no particular quarrel with the Carrier of the disposition made of the work attached to this Ticket Clerk's job at the Freight House which approximates 3 hours 15 minutes per day in that it was transferred to other clerical workers. We do feel, however, it is better for both Management and Employees' Representatives that such distribution be made by joint handling rather than arbitrarily by Management as when so done questions arise in the minds of employees as to the involvement of other rules of the Agreement such as Rating Positions Rule 37, Preservation of Rates Rule 38 and Rates of Pay Rule 40. We also feel that where, as here, we contract with the Carrier for the rates of pay and working conditions for a particular job that it cannot be unilaterally lifted out of the Agreement as long as the work is there and there are workers of our craft or class there available to perform it.

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It is hereby affirmed that all data herein contained in support of claimant's position has been submitted in substance to the Carrier and is made a part of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The record sets out the facts and contentions of the parties in detail, with extensive citation of authorities and by reason of this fact we do not deem it necessary to give a resume of the same in this opinion.

It is our opinion that the historical background of the position in question and the work performed therein gives the key to a solution of this dispute.

The work of the position at Sweetwater, Texas was performed for many years by Telegraphers in the sale of tickets and the work incidental thereto. By reason of an increase in work, occasioned by World War I, in November of 1918 caused the Carrier to establish two positions of Ticket Clerk to assist in the handling of ticket matters. Later, in September of 1930 these ticket clerk positions were abolished and ticket matters were handled by a Ticket Agent and Telegraphers and in May, 1931 the Ticket Agent position was abolished. This left matters pertaining to tickets with the Telegraphers. The need for additional assistance in the handling of tickets again arose in 1942 and Ticket Clerk positions were established. The remaining Ticket Clerk position was abolished on June 18, 1953 by reason of a decrease in business as alleged by Carrier. This act of the Carrier brought into being the present dispute.

We conclude on this record that the work in question cannot be considered as exclusively that of Clerks, as contended, and that the application of the "ebb and flow" doctrine is properly presented and should control.

Numerous awards of this Division are cited on the proposition that if a clerk's position is abolished and there remains work at the location it should be reassigned to clerks there on duty. We do not believe that these cases

are proper for consideration in a situation as here presented. There appears to be a complete line of demarcation in those cases from the situation here under consideration.

As stated, the historical background here shows that such cases are not a proper basis for consideration in this case. Under the facts the position of Carrier should be sustained.

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

The position of the Carrier is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.