

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1) The Carrier violated and continues to violate the terms of the currently effective agreement between the parties when on or about December 4, 1953 it abolished yard clerk position No. 55 at Lindenwood Yard Office in the St. Louis Terminal and concurrently therewith assigned the duty of checking the yards from Kingshighway to and including Scullin Steel, formerly attached to yard clerk position No. 55 at Lindenwood, to the Agent at Cheltenham also in the St. Louis Terminal, requiring him to be away from his post of duty some two and one-half to three and one-half hours per day.

(2) The work of checking the yard from Kingshighway to and including Scullin Steel now be restored to the scope of the Clerks' Agreement and assigned to clerical employees, and

(3) R. W. Gudermuth, former occupant of position No. 55 and all others adversely affected by such violating action of the Carrier, now be reimbursed for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: Included within the confines of the St. Louis Terminal are a yard office at Lindenwood under the supervision of a yardmaster, a non-telegraph station at Cheltenham under the supervision of a non-telegraph agent, and a freight station at Seventh Street, St. Louis under the supervision of a General Agent, as well as various other facilities, all under the general supervision of a Terminal Superintendent.

For many, many years all checking of yards in the vicinity of Cheltenham including the territory from Kingshighway to and including Scullin Steel has been assigned to and performed by car service clerks at Cheltenham or yard clerks at Lindenwood, such work being the subject of the currently effective agreement effective January 1, 1946 and being assigned to a car service clerk at Cheltenham at that time. Such work remained assigned to and performed by the car service clerk at Cheltenham until on or about April 1,

There is no need for more than one employe at this station. The position occupied by the non-telegrapher agent is within the scope of the Telegraphers' Schedule Agreement. In the handling of the dispute on the property the General Chairman was informed that a sustaining award by the Third Division would impose a limitation upon this Carrier which has never existed under the rules of the Clerks' Agreement, and should this dispute ultimately reach the Third Division, it would be the Carrier's intention to invoke the third party issue.

So far as this Carrier has knowledge, the Order of Railroad Telegraphers has not been given notice of the pendency of this dispute before the Third Division. The Carrier submits that a sustaining award may not be issued unless and until notice has been given to all interested parties involved in this dispute in conformity with Section 3, First (j), of the Railway Labor Act. The Carrier requests that for this, if no other reason, the claim here presented be dismissed or denied (Award 6683, BRC vs. SL-SF).

All data in support of the Carrier's position have been made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Initially we must deal with the third party, notice issue raised by Carrier, particularly to reliance on Award 7975 (Coffey).

We have reviewed the language of that Award and are not persuaded we should deviate from the position taken in Awards 7047, 7048, 7049, 7959 and 7960. Therefore, this Board now has jurisdiction over the only necessary parties to this proceeding and over the subject matter. We shall proceed to consideration of the merits.

The material facts in this case are not in dispute. Carrier does not deny Organization's claim that it abolished Yard Clerk position No. 55 at Lindenwood Yard Office, but it does deny Organization's charge that its assignment of checking yards from Kingshighway to and including Scullin Steel, formerly part of the duties of Yard Clerk position No. 55, to the Agent at Cheltenham constitutes the removal of work from the Scope Rule of the Clerks' agreement in violation thereof.

There is no charge that Carrier erred in abolishing the job, but it is charged that Carrier violated the applicable agreement when it assigned a part of the duties of abolished position No. 55 to the Agent at Cheltenham, who is not covered by the Clerks' Agreement.

In addition to the respective arguments, which are a part of this record, both parties refer to Award 615.

Organization also cites many Awards of this Division which it believes supports its position, among them Awards 637 and 751 (Swacker), 2071 and 2074 (Tipton), 4197 (Carter), 4932 (Begley), 5196 and 5790 (Wenke), 6447 (Ferguson), 7409 (McMahon) and 7839 with the Referee here sitting.

We have also reviewed the argument and Awards offered in behalf of Carrier's position, but must and do conclude the preponderant evidence and prior Awards sustain the Organization's position, particularly the following from Award 6447:

"Under the Rules the Carrier has a right to abolish an unneeded job. But in assigning work, whether it be left over from an abolished job or otherwise, there are other rules of the Agreement limiting such assignment."

The claim will 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July, 1957.

DISSENT TO AWARD NO. 8024, DOCKET NO. CL-7546

The record here is clear that Carrier made timely objection to this Division's proceeding in this case until "Due Notice" had been given Telegraphers, as required by Section 3, First (j) of the Railway Labor Act. The failure of the Division to comply with the law, as interpreted by the Federal District and Circuit Courts and the sustaining of this claim has here resulted in an invalid Award. Obviously, the Railway Labor Act does not contemplate that a Referee will be appointed to render an invalid Award. There was opportunity here for the majority to correct the error made by the Division, as originally constituted, by denying the claim on the merits, or by dismissing or deferring it for non-compliance with the provisions of Section 3, First (j).

In sustaining this claim on its merits, the majority has again erred. Cited by the majority are Awards 637, 751, 2071, 2074, 4197, 4932, 5196, 5790, 6446, 7409 and 7839 as precedent Awards for their action here.

The basic facts in each of the above-cited Awards, except Award 7409, are distinguishable. In each and every case the Office involved was multi-manned as contrasted with the one-man station here involved. Overlooked entirely is the fact that sustaining Award 7409 was based on a Rule not here in evidence.

Here error is compounded upon error. The Award is invalid and should be so considered.

We dissent.

/s/ J. E. Kemp
/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan