

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment that:

(1) Commencing Saturday, April 26, 1952, Carrier, in violation of the rules of our Agreement, substituted a Telegrapher, an employe outside the scope of the Brotherhood's Agreement, for a relief clerical worker to relieve the regular Station Clerk on Saturdays of each week on one of his regular designated rest days at Puyallup, Washington.

(2) C. H. Whitworth, the regular assigned employe to position of Station Clerk as of Saturday, April 26, 1952, and his successor, if there be any, be paid wage loss sustained, namely, one day's pay at punitive rate for Saturday, April 26, 1952, and all subsequent Saturdays until the rules violation is corrected.

NOTE: Reparation due employe(s) to be determined by joint check of Carriers payroll and other records.

EMPLOYEES' STATEMENT OF FACTS: The station force at Puyallup subject to the Scope Rule of the Brotherhood's contract with the Carrier, effective June 1, 1946, and supplements thereto embodying the Forty-Hour Week Rules, effective September 1, 1949, comprised two clerical positions.

Position of Cashier was assigned 9 A. M. to 6 P. M., Mondays to Fridays. Five-day per week position. The second clerical position is designated as a Station Clerk, hours 5 A. M. to 2 P. M. less one hour for meal. Six-day per week position. The regular occupant, C. H. Whitworth, assigned Monday through Friday with Saturdays and Sundays as designated rest days. The Saturday relief service was assigned to Relief Position No. 26 requiring relief service in Tacoma Yard and at Puyallup. The ordinary duties assigned to this position are: work head end Trains Nos. 401, 410, 4 and 422; make yard check; make switch list for train crews; handle express and bill same; sell tickets and respond to patrons' requests for train information; compile C. S. and car reports.

Effective Saturday, April 26, 1952, Carrier abolished Relief Position No. 26 and concurrently therewith assigned the work normally attached to

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees, and is made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The station force at Puyallup, Washington, consists of an Agent, two Telegraphers, a Cashier, and a Clerk-Warehouseman. Prior to April 26, 1952, a relief Clerk-Warehouseman worked on Saturdays, the rest day of the Clerk-Warehouseman. Effective that date the relief position was abolished. The Brotherhood contends that thereafter on Saturdays work belonging exclusively to the Clerk-Warehouseman was performed by a Telegrapher. The Carrier denies this, asserting that whenever work performed exclusively by the Clerk-Warehouseman was to be performed on Saturday he was called in, and that on the Saturdays when he was not called in the Telegrapher performed only work that was common to both the Telegrapher position and the Clerk-Warehouseman position. It appears that of the 36 Saturdays in 1952 following the abolition of the relief position, the Claimant was called in to work on 27 of them; that in 1953 he was called in on 49 of the 52 Saturdays; and that in 1954 he was called in on 20 Saturdays.

The record is not at all clear as to which work was exclusively that of the Clerk-Warehouseman and which work was ordinarily performed by both the Clerk-Warehouseman and the Telegrapher. But more important than that, the record is completely devoid of evidence as to what work was performed by the Telegrapher on any Saturday. In the absence of such evidence it is obviously impossible to find that work belonging exclusively to the Clerk-Warehouseman was performed by a Telegrapher. Evidently neither the Claimant nor anyone in his behalf ever observed what work was done by a Telegrapher on any Saturday. We have many times held that mere assertions cannot take the place of proof.

It was argued in behalf of the Brotherhood that the work was there to be done and therefore it must have been done by a Telegrapher. This is mere argument, not proof.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1957.