

Award No. 8313

Docket No. CL-8200

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

PACIFIC ELECTRIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee:

1. The Carrier violated and continues to violate the clerical agreement when, effective August 1, 1953, without agreement with the Brotherhood, it discontinued Station Clerk Job No. 300 at West Hollywood, California, and concurrent therewith transferred position of Agent, Beverly Hills, California to West Hollywood, to perform work of discontinued Station Clerk Job No. 300 and/or other clerical work at West Hollywood.

2. That said work be restored to employees under the scope and operation of the Clerks' Agreement on Operating Department Roster No. 3.

3. That the former incumbent of Station Clerk Job No. 300 and/or other affected employees under the scope and operation of the Clerks' Agreement, to be determined by joint check of Carrier's payroll and other records, shall now be paid a day's pay at the rate of Station Clerk Job No. 300, effective August 1, 1953 and continuing for each date of violation.

EMPLOYES' STATEMENT OF FACTS: The Operating Department of the Carrier maintains a non-telegraph agency station at West Hollywood, California, engaged in carload and less-than-carload freight business.

Previous to the effective date of our agreement with the Carrier, the clerical work was performed by employees under the supervision of an employee with the title of Agent. Effective April 1, 1935 and to August 1, 1953, the Clerks' Agreement was applied to all employees other than the Agent, whose position was first covered and identified by Agreement between the Carrier and The Order of Railroad Telegraphers dated September 16, 1934.

July 31, 1953, the following force was in effect:

formance and particularly repugnant to the principles recently agreed upon between railroad managements and labor organizations, including the labor organization party to the present dispute.

6. THE BOARD IS WITHOUT ANY AUTHORITY TO REQUIRE THE CARRIER TO REESTABLISH ANY POSITION.

Item No. 2 of the "Statement of Claim", by innuendo at least, asks that the Board order the Carrier to summarily restore the alleged work loss to the scope and operation of the Clerks' Agreement. This is tantamount to asking that Job No. 300, Station Clerk, West Hollywood, California, be reestablished.

Such a request is not within the authority of the Board to decide. The Board itself has so held in innumerable awards, including Award 6455. In the opinion in connection with this award, the Board said:

"2. We have frequently held that this Board is without authority to require the Carrier to reestablish any position. See, for example, Award No. 4987, involving the same parties."

For the ready reference of the Board, Item No. 2 of the Statement of Claim in Award No. 6455 reads as follows:

"2. The Carrier shall restore all employees affected to their respective positions as of May 3, 1951, and"

The Board denied part 2 of this claim.

Suffice to say, this portion of the claim must be dismissed.

CONCLUSIONS

The Board is respectfully requested to:

1. Dismiss the claim because the Board is without legal authority to render an award in the absence of notice to all parties involved.

2. Dismiss the claim because the claim presented to the Board is not the same claim presented to the Carrier and subsequently handled on the property.

3. Dismiss the claim because it is not supported by the undisputed facts.

4. Dismiss the claim because it is vague, uncertain, ambiguous and unintelligible.

5. Dismiss the claim because the Board is without any authority to require the Carrier to reestablish any position.

6. Enter a denial award because there has been no violation of any rule of the collective agreement in effect between the parties.

All data in support of Carrier's submission is within the knowledge of the employees.

(Exhibits not reproduced)

OPINION OF BOARD: Prior to August 1, 1953, the Carrier maintained a non-telegraph agency station at West Hollywood, California, and another non-telegraph agency station at Beverly Hills, California, one and one-half miles distant. At West Hollywood, the force consisted of an agent, a cashier, a rate and revising clerk, and a station clerk. At Beverly Hills,

an agent was the only employee. The Beverly Hills Agency handled only carload accounts and averaged less than four carloads received per day over the year prior to August 1, 1953. Business had decreased at both agencies over several years and in 1952, since the team track and industries served from the Beverly Hills Agency were as close to the West Hollywood Agency as to the Beverly Hills Agency, Carrier considered abolishing the agency at Beverly Hills and consolidating the general area into one agency at West Hollywood. It was decided however that the nature of the business handled and the clientele served required the continuation of the Beverly Hills Agency and the position of Beverly Hills Agent.

In order to economize, on August 1, 1953, the Beverly Hills Agent and Agency were physically moved to the same facilities as the West Hollywood Agency and the Beverly Hills freight station was put to other uses. Thus, after August 1, 1953, there were still two Agencies but only one freight station.

On July 31, 1953, the position of Station Clerk, Job No. 300, at West Hollywood was abolished.

It is Petitioner's contention that the Station Clerk position was abolished and the Beverly Hills Agent transferred to West Hollywood as part of one plan which called for the Beverly Hills Agent to take over the work of the Station Clerk, or to relieve the West Hollywood Agent of clerical work formerly done by him so that he could take over the Station Clerk's work. In support of this contention, Petitioner asserts that the work of the Beverly Hills Agent before the transfer consisted primarily of contacting car receivers and other public relations work, and the total amount of his work at Beverly Hills amounted to less than a couple of hours per day. Since his transfer, according to Petitioner, he has performed, full time, general clerical work incidental to the West Hollywood Agency.

Carrier states that because of the business decline at both Agencies, it made an overall study of conditions in the general area. As a result of this study, it was determined that the station force at West Hollywood without the Station Clerk would be more than sufficient to handle the freight and passenger business at that point. The decision to abolish the Station Clerk, according to Carrier, was independent of the decision to move the Beverly Hills Agent to West Hollywood. Carrier asserts that the Beverly Hills Agent brought all of his previous business and duties with him and continued to do the same work in the same manner as he had done at the Beverly Hills location; in addition, the two Agents assisted one another in their solicitations and minor phases of their work.

In addition to these assertions of the parties, there is further evidence in the file in the form of a letter dated April 6, 1954 from the General Chairman to the Manager of Personnel, setting forth the results of the former's personal observations at West Hollywood as to the distribution of the work of the Station Clerk. The letter reads in part:

"I have investigated this matter at West Hollywood and find that Agent Mullins, transferred from Beverly Hills concurrent with the abolishment of Job No. 300, is performing work previously performed by Agent Carper at West Hollywood, thus permitting Agent Carper to absorb work of Job No. 300. This arrangement could serve to obscure the flow of work, but it by no means alters the fact that work properly belonging to clerks at West Hollywood has been absorbed by the assignment of Agent Mullins at that location, thus violating the Clerks' Agreement."

Both parties take comfort from this letter. Petitioner argues that the General Chairman found the Beverly Hills Agent to be doing West Hollywood clerical work formerly performed by the West Hollywood Agent. Carrier argues that the letter negates the claim as submitted since it shows that the Beverly Hills Agent is not doing any work of the discontinued

Station Clerk position; and also that the General Chairman found the Beverly Hills Agent to be doing not clerical work but work previously performed by Agent Carper.

The crux of this case is in the nature of the work performed. It does not appear that transferring the Beverly Hills Agent physically to West Hollywood while keeping the Beverly Hills Agency in existence would entitle the Beverly Hills Agent to do any work which he was not entitled to do at his old location. On the other hand, he would be entitled to do the same work at West Hollywood as he was entitled to do at Beverly Hills. If this work included some solicitation for the West Hollywood Agency or other help to the West Hollywood Agent, Petitioner would have had no cause to complain unless the work was in fact work belonging to West Hollywood clerical employes. In order to sustain the claim, it is necessary to find that the Beverly Hills Agent, after his transfer, performed work belonging to West Hollywood clerical employes. In view of the conflicting evidence set forth above as to the nature of the work performed, we are unable to make a definitive finding on this point; for this reason, the claim will be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 8th day of April, 1958.