

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island & Pacific Railroad that:

1. The Carrier violated and continues to violate the terms of the prevailing agreement between the parties hereto when, on October 3, 1952, it declared the exclusive Freight Agent's position at Holdenville, Oklahoma, abolished and assigned the work of that position to an employe not within the scope of the said agreement.

2. The Carrier shall be required by an appropriate order from the Board:

(a) To restore the position of exclusive Freight Agent at Holdenville, Oklahoma, at the rate of pay established therefor by the existing agreement between the parties hereto;

(b) To restore the former regularly assigned incumbent, W. C. Holmes, to the said position if he so elects or, if not, to advertise the reinstated position as a vacancy in accordance with the bulletin rules of the said agreement;

(c) To reimburse the former, regularly assigned incumbent, W. C. Holmes, for the difference between what he would have earned had he not been illegally removed from the Holdenville assignment, and what he has earned on other positions, plus any other loss sustained by him as a result of Carrier's action;

(d) To pay the senior, idle telegrapher on the seniority district here involved eight (8) hours daily at the Holdenville rate of pay for each day the violations charged herein have existed;

(e) To compensate all other employes adversely affected by the said violations.

Assist in receipt and delivery of freight from and to drayman.
 Check yard
 Make 37 and 42 reports
 Handle demurrage records
 Handle seal records
 Handle concealed damage reports
 Handle "Refund" reports
 Handle all interchange reports
 Make all lists for cars on spot and cars lined up and ready to move.
 (Switch lists)

These are clerical duties pure and simple. Some of these are duties which may be assigned to a telegrapher under Rule 40(a). Their assignment to an agent under the permissive provisions of Rule 40(a) does not grant their performance exclusively to employes of the Telegraphers' craft forever thereafter.

This is a continuing claim starting nearly three years ago. The reluctant manner in which the Organization has progressed this claim to your Board is evidence of the uncertainty of the validity of their contentions. The chronological record of the handling of this dispute on this property is contained in Carrier's Exhibits "A" to "H". Having been declined by the highest officer on this property, who is authorized to adjudicate claims on January 15, 1953, the Organization did not pursue this dispute to a determination until September 29, 1955. Had the organization been convinced of the correctness of their position, it seems likely that they would have pursued this dispute to a conclusion long before this.

For the above stated reasons, the Carrier has declined the subject claim and we respectfully request your Board to support our position.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to October 3, 1952, Carrier employed an exclusive Freight Agent and a Cashier-Clerk at its freight station at Holdenville, Oklahoma. At the passenger station at Holdenville, Carrier employed a Ticket-Agent-Telegrapher on the first trick and a telegrapher on the third trick. A second trick telegrapher was employed there by another carrier with which the passenger station was jointly operated by Carrier. In addition, Carrier employed a Roadmaster at Holdenville. The Cashier-Clerk performed clerical work for the Roadmaster as well as for the Freight Agent. The Freight Agent supervised the freight station, yard and other Carrier property, signed all reports and drafts at Holdenville which required agent's signature, solicited freight and passenger business from the public, and performed numerous items of clerical work; he did no telegraphing.

On or about October 3, 1952, the Roadmaster was moved from Holdenville to Shawnee, Oklahoma and certain changes were made by Carrier in assignments at Holdenville which resulted in the following situation there: At the freight station, there was no longer an agent of any kind; the only remaining employe there was the Cashier-Clerk, who no longer had any duties to perform for the Roadmaster but who was assigned all of the clerical duties formerly performed by the Freight-Agent. At the passenger station, the former Ticket-Agent-Telegrapher position on the first trick became known as Agent-Telegrapher with its rate increased to the rate of the former Freight

Agent, and with the non-clerical duties of the former Freight-Agent, listed above, now assigned to it. The former Freight Agent, Claimant herein, was offered the Agent-Telegrapher position but declined it for personal reasons; the former Ticket-Agent-Telegrapher remained on as Agent-Telegrapher.

Petitioner contends that Carrier abolished the Freight Agent position while the work of the position remained to be done and assigned the bulk of the remaining work to the Cashier-Clerk, an employe outside the scope of the Telegraphers' Agreement. It is Petitioner's contention that this work belonged to telegraphers under the Scope Rule of their agreement by virtue of its performance by the Freight Agent during the more than thirty years of the position's existence.

Carrier contends variously that there was a consolidation of the Freight-Agent and Ticket-Agent-Telegrapher positions, and that there was a reclassification of the Freight-Agent position to Agent-Telegrapher under Rule 33(e) of the Agreement, set out in the Carrier's submission. In any case, Carrier argues, the Freight Agent had no exclusive right to the clerical duties but only to the supervisory, soliciting and report-signing duties of the position; these were assigned to an employe under the Telegrapher Agreement and the clerical duties were properly assigned to a clerk.

It appears from the record that prior to 1917 there was an exclusive freight agent at the freight station and three telegraphers at the passenger station at Holdenville. In addition, at that time, there were some six clerical employes. As of 1920, an exclusive ticket agent at the passenger station had been added. This position was abolished in 1932 and re-established about 1942. In 1950, it was consolidated with the first trick telegrapher position. The record does not show when the clerical force diminished to just one cashier-clerk. Carrier states only that as business decreased, the station force was reduced, and remaining clerical work was assigned to the agent; and that by 1952, the supervisory duties for which the Freight Agent position was established at Holdenville had all but disappeared. Petitioner states that the clerical duties had justified the existence and continuation of the Freight Agent position for many years and were the major duties of the position. Carrier states that it is the responsibility for supervision of station operations which justifies agent's pay and which was the reason for establishing the Freight Agent position.

Petitioner bases its statement that the clerical duties were the major part of the Freight Agent position on a tabulation of his duties showing that of twenty-four items of work, twenty were clerical in nature and were transferred to the Cashier-Clerk; and argues that in this situation it cannot be said that the Freight Agent was merely filling out his time with the clerical work. Carrier, while not disputing the tabulation, insists that the remaining four items were the essential part of the Freight Agent position, and that it was the fact that these had declined to a minor part of the total duties which justified combining them with the duties of the Ticket-Agent-Telegrapher, eliminating the Freight Agent and assigning the remaining clerical duties to the Cashier-Clerk.

Lengthy arguments are made as to whether there was in fact a consolidation, reclassification or abolishment, and as to the application of the ebb-and-flow doctrine to this case; and appropriate awards are cited on these points by both parties. In the final analysis, it seems to us that this case is governed by the line of awards which have held in cases not too dissimilar from this one that, as stated in Award 6363:

"This Board has consistently held in many cases that when a position has been abolished, as here, and the remaining duties, sometimes performed by telegraphers, are of a clerical nature, it cannot be said that such clerical duties belong exclusively to the Telegraphers, nor does the Scope Rule contain any such provision, nor does such right exist through custom and practice, where the major duties of the position have been abolished and those remaining are of a clerical nature."

See Awards 5719, 5803, 5867 for similar statements.

We think that the major duties of the Freight Agent position and those which gave it the nature of an agent rather than a clerical position were the supervisory duties and the solicitation of business. These duties, over the course of time, had waned until the solicitation disappeared and Carrier determined that the supervision could be added to the then Ticket-Agent-Telegrapher position without impairing the required agency functions. It is not clear from the record at what point these functions first declined so as to make up only a minor part of the volume of the Freight Agent's duties, but we are not convinced that the clerical work was so basic a part of the Freight Agent's duties as to become reserved to that position or another Telegrapher position, and not be transferable to a clerk when no other duties required the maintenance of the Freight Agent position. For the above reasons, 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 5th day of June, 1958.