

Award No. 8672

Docket No. CL-8222

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated the Clerks' Agreement:

(1) When effective November 7, 1953, it abolished the clerical position of Cashier at Faribault, Minnesota, which was an eight-hour assignment, and removed clerical work comprised of the regularly assigned duties of that position from under the scope and operation of the Clerks' Agreement, utilizing the Agent and Telegraphers, employees of another craft and subject to the Agreement of another craft, to perform said work, in violation of Scope Rule 1, and other related rules of the Clerks' Agreement.

(2) That the clerical work assigned to the Agent and Telegraphers, employees of another craft, be returned to the clerical forces.

(3) That the Carrier be directed by appropriate Board Order to reimburse W. L. Savoie, former Cashier, Faribault, Minnesota, and other clerical employees affected, for any monetary loss sustained, retroactive to November 7, 1953.

EMPLOYEES' STATEMENT OF FACTS: On October 16, 1953, the Carrier furnished a statement showing present duties on position of Cashier at Faribault, Minnesota, estimating time to perform such duties and showing disposition of same in connection with discontinuing the Cashier position at the completion of tour of duty November 6, 1953. Copy of Carrier's notice is as follows:

"Faribault, Minn., 10-16-53

"Title of position: Cashier. Incumbent: W. L. Savoie

Station Location: Faribault, Minn. Office Location: Freight House.
Monthly rate of pay: \$307.05.

Award 4893, Opinion of Board:

"Based upon all of the facts and circumstances of this particular case the Board is not disposed to disturb the action of the Carrier."

Award 4998, Opinion of Board:

"In the instant claim, third trick telegraphers have performed this work from the year 1919 to the war year 1943. Then when his duties became so great, the work was given to clerks. When the work slackened, it was again given back to the third trick telegrapher. When it increased, it was given to a clerk on December 1, 1947, and when it again decreased in July, 1948, it was returned to the telegrapher. It was work incidental to and in proximity with his duties. This we believe the Carrier has a right to do. A denial of this claim is in order. Awards 523, 615, 638, 1566, 2334, 3003 and 4492."

Award 5489, Opinion of Board:

"In the interests of stability in labor relations, we feel compelled to conform to past decisions of this Board interpreting the same or identical clauses of the Agreement unless our past ruling be clearly erroneous. For a concise recital of the ebb and flow doctrine see Award 4477."

As late as December, 1955, your Board upheld the position taken by the Carrier in this dispute. In rendering Award 7198, which denied a similar Clerks' claim on this property at Waterloo, Iowa, your Board referred to Awards 615 and 636, holding that:

"... It has always been the rule that telegraphers may be assigned clerical work without limit except their capacity to fill out their time when not occupied with telegraphy."

As previously cited in Award 615, your Board held that seniority rules merely control the distribution of the work that is available under the agreement. As we have shown, there was no necessity for maintaining the position of Cashier at Faribault and for your Board to order its restoration would burden the Carrier with the added expense of maintaining a position, the duties of which can be assigned to the Agent and the Operators at Faribault without violation of any rule of the agreement.

In view of the long history of this issue before your Board and the determination of it under the applicable agreement in previously cited Awards on this property and others, the Carrier has rejected the Organization's claim and we respectfully request your Board to do likewise.

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

(Exhibits not reproduced.)

OPINION OF BOARD:—Before November 7, 1953, Carrier maintained at its station in Faribault, Minnesota, a monthly-rated clerical position of Cashier, occupied by claimant. At said station Carrier also maintained the positions of Agent-Operator, Second Trick Operator, and Third Trick Operator.

It appears from the record that the position of Cashier at said station had existed for some 40 years, was in existence when the first Clerks' Agreement was negotiated in 1922, and was also in existence when subsequent Agreements were negotiated.

By notice of October 16, 1953, Carrier told claimant and his Division Chairman that the Cashier position would be abolished as of November 6, 1953. Said notice listed the various duties performed by claimant, the amounts of time involved thereon, and the disposition of said duties among the three employees subject to the Telegraphers' Agreement. The total amount of time involved in all said duties was given as five hours and 50 minutes. (The Employees assert that the total was at least eight hours.)

The Organization protested the abolishment, and an unsuccessful conference was duly held between the parties on November 6, 1953. Thereafter the claim was duly progressed up to the Carrier's highest official designated to handle such matters. He denied the claim on December 30, 1953.

On December 29, 1955, this Division received from the Organization a notice of intention to file an ex parte submission on the claim. Said submission was received on January 31, 1956.

The first issue raised by the instant case is whether claim should be barred because not timely filed under the provisions of Article V, Section 2, of the Chicago Agreement of August 21, 1954. The Board's ruling on this question is that it was timely filed, and for the same reasons as those set forth in Award 8669. The claim is not barred.

The second issue raised by the case is that of notice to a possibly interested third party, the Telegraphers. The Board rules that such notice is required. There is the possibility here of a sustaining award on the merits of the case. For this reason and for the other reasons set forth in our Award No. 8408 the Board holds that consideration of said merits must be deferred pending notice to the Telegraphers giving them opportunity to be heard.

FINDINGS: The Third Division of the Adjustment Board, upon the 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, subject to the following finding as to notice:

That The Order of Railroad Telegraphers is involved in this dispute and is therefore entitled to notice of hearing pursuant to Section 3, First (j) of the Railway Labor Act, as amended;

That the merits of the instant dispute are not properly subject to decision until said notice is given.

AWARD

Hearing and decision on merits deferred pending due notice to The Order of Railroad Telegraphers to appear and be represented in this proceeding if it so desires.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January, 1959.