

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 General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

(1) When, effective December 10, 1954, it abolished the clerical position of General Clerk at Joliet, Illinois, and removed clerical work comprised of the regular assigned duties of that position from under the scope and operation of the Clerks' Agreement and utilized a Telegrapher, an employe 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 performed by the Telegrapher, an employe of another craft, be returned to the clerical forces.

(3) That the Carrier be directed by appropriate Board Order to reimburse all employes affected for any monetary loss sustained, retroactive to December 10, 1954.

EMPLOYES' STATEMENT OF FACTS: December 3, 1954, Agent C. H. Meyers, Joliet, Illinois, addressed the following to Clerk V. J. Broadwell:

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 General Clerk at Joliet 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 remaining clerical and telegraph employees at Joliet 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.

OPINION OF BOARD: Effective December 10, 1954, Carrier abolished the position of General Clerk No. 2 at its Freight Office in Joliet, Illinois. The incumbent of said position at that time was Clerk V. J. Broadwell. By notices dated December 3 and 9, 1954, to him, to other affected employees, and to the Local and Divisional Chairmen, Carrier told of the intended abolishment and of the intended distribution of the duties of said position.

It appears from the record that on November 20, 1954, Carrier had abolished the position of Telegrapher at its Yard Office in Joliet and, some time after December 10, 1954, the effective date for abolishment of the position of General Clerk No. 2 at the Freight Office, established a Telegrapher's position at the latter office.

The new Telegrapher's position at Carrier's Freight Office was one of several (the others being Clerical) to which Carrier apportioned the work of the abolished position. It appears from the record that the "remaining" duties of the abolished position to which Carrier refers in its submission totaled 400 minutes on Mondays and 305 minutes on other workdays. It appears further that on Mondays the newly established Telegraphers' position received 120 minutes of the abolished position's duties, and on other workdays 185 minutes thereof.

On December 10, 1954, a joint conference was held by representatives of Carrier and Employees, who failed to resolve the dispute over Carrier's right to abolish the position of General Clerk No. 2 in the manner it did. Thereafter said dispute was progressed to Carrier's highest officer designated to handle such claims. He declined the instant claim on March 22, 1955. The Employees on November 9, 1955, filed with this Division notice of their intention to file an ex parte submission on said claim, and their submission was received by this Division on December 13, 1955.

On January 13, 1956, Carrier's representatives on this Division moved that a so-called "third party" notice be sent to the Telegraphers. Said notice failed of adoption, and Carrier's representative now raises this issue before this Referee. Carrier did not raise this question on the property or in its submissions to this Division.

The Board, with this Referee sitting as member thereof, now rules that the instant case may not be considered on its merits unless and until the Telegraphers are notified of the dispute and are given opportunity to be heard thereon. The reasons for this ruling are two: First, as to the argument that

the issue of notice is not properly before the Board because not raised by Carrier on the property or in its submission, the Board holds that said contention should not be persuasive or controlling. While it is true that under the amended Railway Labor Act the Board's primary function and duty is to settle appealed claims promptly, it is also true that the Board, as an administrative agency created by the Act, is bound by and must give effect to all the provisions of the Act, including Section 3, First (j), as interpreted by federal courts. Second, there is the possibility here of a sustaining award. For this reason and for the other reasons set forth in this Division's Award No. 8408 the Board holds that a determination of the instant claim on its merits must be deferred pending notice to the Telegraphers giving them opportunity to be heard.

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; 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; and

That the merits of the instant dispute are not properly subject to decision until such 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 12th day of March, 1959.