Award No. 8764
Docket No. CL-8223

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 for the period July 11, 1953 to August 5, 1953, it changed the starting time of the second Yard Clerk, Mr. Joe B. Carter, and Chief Yard Clerk, Mr. Arthur Spearing, and assigned the checking and working of the mail and baggage for train No. 508 to the Telegraphers, an employe of another craft and not covered by the Clerks' Agreement.

(2) That the Carrier be directed by appropriate Board Order to compensate Joe B. Carter, Second Yard Clerk, rate $303.80, per month, for a two-hour call on July 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and 31, and August 1 and 2, 1953; and J. H. Lawson, Relief Yard Clerk, rate $303.80 per month, for a call of two (2) hours each day, July 13, 14, 20, 21, 27 and 28, and August 3 and 4, 1953.

EMPLOYES' STATEMENT OF FACTS: Prior to July 10, 1953, the assigned hours of the two Yard Clerk positions in question were as follows:

Second Yard Clerk:	12:30 A.M. to 6:00 A.M. 6:00 A.M. to 7:00 A.M., Meal Period 7:00 A.M. to 9:30 A.M.
Chief Yard Clerk:	9:30 A.M. to 2:00 P.M. 2:00 P.M. to 3:00 P.M., Meal Period 3:00 P.M. to 6:30 P.M.

Agent S. C. Hill issued the following notice on July 7, 1953:

Award 7198, Opinion of Board:

> "While the record is clear that all ticket work has been assigned to and performed by clerks for a number of years, it is likewise clear that such work had initially been done by telegraphers and had been assigned to clerks classified as Ticket Agents (two positions) when the volume of work required."

We again refer to your Board's Award No. 4492 which disposed of the identical question of on-duty telegraphers performing head-end work on trains without being in violation of the applicable Clerks' 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: Prior to July 10, 1953, the starting time of the workday assigned to the Second Yard Clerk position at Carrier's station in Chickasha, Oklahoma, was 12:30 A.M. Under said starting time the occupant of said position and his relief, Claimants herein, had been performing for many years the head-end work involved in the scheduled arrival of train No. 508 at 1:15 A.M., including the sorting of mail and the checking of baggage.

By notice of July 7, 1953, Carrier told Claimants that effective July 10, 1953, the starting time of their positions would be advanced two hours, i.e., to 2:30 A.M. The work previously done by Claimants on their positions from 12:30 A.M. to 2:30 A.M. was assigned to the telegrapher on duty at the location.

By notice of August 3, 1953, Carrier told Claimants that, effective August 5, 1953, the starting time of their positions would be restored to 12:30 A.M. Thereafter they again performed the various head-end duties involved with train No. 508.

Claims for two-hour calls were filed, denied, progressed, and finally, on September 8, 1953, declined by Carrier's highest official designated to handle such matters. On December 30, 1955, this Division received notice from the Organization of its intention to file an ex parte submission on the claims. Said submission was received on January 31, 1956.

Three issues are presented by the instant dispute: (1) Was the Organization's submission to this Division untimely filed within the meaning and intent of the relevant provisions of Article V, Section 2, of the August 21, 1954 National Agreement? (2) Is a so-called Third Party Notice of the Telegraphers here required under Section 3, First (j) of the amended Railway Labor Act? (3) If the answer to both of the above-stated questions is "no", did Carrier violate the Parties' Agreement by assigning head-end and related work, previously done by Clerks, to a Telegrapher during the claim period?

On the first of these issues the Board rules that the Organization's submission was timely filed, and the claims are not barred. The reasons are the same as those presented in this Division's Award No. 8669 and need not be repeated here.

On the second issue—that of notice to the Telegraphers—, the Board rules that, because the claims are not continuing ones but involve only a short period of time in 1953, the interest of the Telegraphers cannot be considered as being of such magnitude as to require notice of the dispute and opportunity to be heard.

Accordingly, the Board proceeds to a consideration of the claims on their merits. The Board finds that Carrier had the right, as such, to change the starting time of Claimants' positions and that, in exercising said right, Carrier conformed to the procedural requirements of Rule 26. The Organization in fact does not challenge this right and the manner of its exercise, as such, contending rather that Carrier employed said right to an end that had the effect of violating the Scope Rule of the Agreement.

The Organization does not charge the violation of any other specific rule and the Board finds none such. This case is to be decided solely with reference to the meaning and intent of the more or less general Scope Rule.

This Board has frequently held that a Scope Rule of the sort here involved covers and names positions rather than specific work and operations; that therefore, in terms of the latter, it is general, vague, and in a sense ambiguous; and that therefore its coverage is to be determined from the facts regarding custom, usage, and practice on the property and on the locations thereof.

Custom and practice governing the Clerks' Scope Rule, particularly in relation to the work of Telegraphers, may be considered in general or in specific terms. Under the general approach this Board has handed down numerous awards establishing such principles as (1) clerical work is not an exclusive right of Clerks, and members of other organizations may properly perform clerical work that is incidental to and in proximity to their regular duties; (2) a Telegrapher may be given clerical work suited to his capabilities to the extent necessary to fill out the workhours of his assignment; and (3) clerical work may flow out from Telegraphers or others to Clerks as railroad business at a location increases and may ebb back to Telegraphers or others from Clerks as said business diminishes.

Under the specific approach, particular rules in an agreement may be involved (this is not true here); and particular facts in respect to custom, flow-ebb, and other principles are to be considered.

The general approach, including the historical relationships between Telegraphers and Clerks (as set forth in Award 615), is of great value and assistance, and its importance is certainly not to be minimized or disregarded. The Board wishes to point out, however, that it is possible to rely too heavily or even exclusively on the idea that, in respect to work at stations, "in the beginning God created Telegraphers and sometime later the Clerks were fashioned out of a Telegraphers' rib." This may be illustrated in the current series of dockets involving these Organizations, wherein Carrier, with much the same language in each docket, "throws the general book" at Petitioners and provides a minimum of evidential particulars about specific practices and custom, including flow and ebb. In short, the Board finds that a combination of general and specific approaches is best for the Parties and for the Board. The Board is disinclined to rely solely on the general approach to the interpretation of scope rules like the one here involved. This is not a new principle in itself, but it merits fresh emphasis.

Applying the combined general-specific approach to the instant case, the Board finds as follows: (1) It is settled that, in general, the performance of head-end and related work is not "owned" exclusively by the Clerks, i.e., both Clerks and Telegraphers may, under appropriate circumstances, properly perform such work. (2) What constitutes "appropriate circumstances" depends in part on the general principle of flow-and-ebb and in part on the specific facts of record as to custom and past practice. (3) If the general principle of flow-ebb is to be applied, there must be specific facts of record bearing thereon. It is usually not enough to rely on the notion that the employment of Telegraphers antedated that of Clerks in many stations or locations of many carriers. The carrier in a particular case is obligated to establish, as many carriers have done in cases previously decided by this Division, an earlier rise and a subsequent fall in freight and/or passenger business. (4) There being no evidence of this sort in the instant case, the flow-ebb situation must be found not to exist here, and the principle is inapplicable. No job(s) were abolished, no remaining duties were apportioned. (5) There is no specific evidence that because of business-ebb or other circumstances the Telegrapher had idle time during his workdays and needed the head-end and related work to fill out his assignment. (6) Uncontroverted testimony of record establishes that Claimants have for many years been performing the disputed work at the location here involved, both before and after claim dates. (7) Although Carrier had the right to advance the starting times of Claimants' workdays and although Carrier exercised this right in accordance with the procedures required by the Agreement, the effect to Carrier's exercise of said right was to remove from the scope of the Clerks' Agreement work that by specific custom and practice had been placed thereunder. (8) There having been no ebb of work and no proved idle time of the Telegrapher at the location, said exercise was improper and must be considered a violation of the Scope Rule. The claims are to be sustained.

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 Carrier violated the Scope Rule of the Agreement.

AWARD

Claims (1) and (2) sustained.

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.