

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 employee 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 employee of another craft be returned to the clerical forces.

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

SEE AWARD 8761 FOR STATEMENT OF FACTS AND POSITIONS OF PARTIES.

OPINION OF BOARD: This case was previously considered in this Division's Award No. 8761, wherein it was ruled that, before the Claims in the case might be considered on their merits, a hearing must be held offering the Telegraphers an opportunity to present testimony. On May 1, 1959, notice was sent to Carrier, to the Clerks, and to the Telegraphers of a hearing to be held on June 3, 1959. Said hearing was held as scheduled, but the Telegraphers were not represented thereat, having on May 12, 1959, notified this Division that their Organization was not involved in the instant dispute.

The procedural and jurisdictional requirements of Section 3, First (j) of the amended Railway Labor Act, as interpreted by the Federal Courts, having been fulfilled, the Board may now properly determine the merits of the claims.

The facts presented by the Parties may be summarized as follows: 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. G. 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, a few days after December 10, 1954, the effective date for the abolishment of the position of General Clerk No. 2 at the Freight Office, established a Telegrapher's position at the latter office. No telegrapher's position existed at either location between November 20, 1954, and the date when the Telegrapher position was created at the Freight Office. Carrier states, without contradiction by the Employees, that its experience during said intervening period demonstrated the necessity for having a Telegrapher on duty for the sending of messages of record.

The new Telegrapher's position at Carrier's Freight Office was one of several (the others being Clerks' positions) to which Carrier apportioned the work of the abolished position. It appears from the record that the "remaining" duties of the abolished position totaled 400 minutes on Mondays and 305 minutes on other workdays (Tuesdays through Fridays). It appears also that on Mondays the newly established Telegrapher's position received 120 minutes of the abolished position's duties and on the other workdays 185 minutes thereof. It appears further that the time spent by the Telegrapher on actual telegraphic work was not more than two hours a day.

Although the above-summarized facts differ considerably from those found in the other cases of the current series involving these same Parties, the respective contentions of the Carrier and the Organization as to the application of their Agreement to the instant facts are substantially the same as in the other cases. A summary of said contentions may be found in Award No. 8793, and it will not be repeated here. Here, as in the other cases, no procedural defects are alleged by the Employees.

The Board now finds, as it did in Award No. 8793, that Section 2(k) of the Scope Rule; Rule 2, Interpretation (1); and the first two paragraphs plus Interpretation 1 of Rule 69 are inapplicable or are inconclusive to a determination of the instant case. Accordingly, Carrier may not be said to have violated these Rules.

Of the specific Rules of possible relevance, Interpretation 2 of Rule 69 remains to be considered. On the basis of the Board's discussion of this Interpretation in Award No. 8793, the following points must be made: (1) The facts of the instant case established that (a) the abolished clerical position was not a full-time one at the time of its abolishment; but (b) it had substantial "remaining" duties and time; (c) a considerable portion of said remaining duties and time were given to the Telegrapher; and (d) this Telegrapher's position has never been previously located at the office (Freight Office) where the abolished clerical position had long existed. (2) Interpreta-

tion 2 of Rule 69 requires that Carrier, so far as possible, must apportion the remaining work of an abolished clerical position to the remaining clerical positions at the location. (3) Interpretation 2 of Rule 69 is, accordingly, relevant to a determination of the instant case. (4) In respect to the instant case, Carrier was obligated to distribute all the work of the abolished General Clerk Position No. 2 to the remaining clerical positions, and not to the new Telegrapher position, at the Joliet Freight Office—if such distribution was possible. (5) The Organization, as well as Carrier, has failed to present compelling positive evidence as to whether such required distribution was or was not possible. (6) Therefore, although Interpretation 2 of Rule 69 is relevant, there is an insufficient factual basis for using it to settle the issue here in dispute.

As in the case decided by Award No. 8793, the Board is here compelled to look also to the general Scope Rule and to its interpretations as set forth in said Award. In respect to same and their relation to the facts of the instant case, the Board finds as follows: (1) In the Parties' Agreement there is no rule prohibiting Carrier from abolishing the Telegrapher's position at the Yard Office and from later re-locating it at the Freight Office. Carrier had the right to do this. (2) The Employees have failed to present persuasive evidence that the purpose or effect of Carrier's exercise of said right was to circumvent the effective application of any relevant Rule. (3) Given the proper existence of the new Telegrapher position at the Freight Office, the facts show that (a) the clerical duties given by Carrier to the occupant of said position were performed by him in proximity to his telegraphic work at said location; and (b) the Telegrapher at said location would have had six or more hours of idle time each workday unless given clerical work to help round out his tour of duty. (4) Accordingly, the two principles that (a) the clerical work done by a telegrapher should be incidental and proximate to his telegraphic work and (b) a telegrapher may do clerical work in order to fill in his otherwise idle time were not violated by Carrier. (5) As to the general flow-ebb principle, no persuasive evidence is presented by either Party in respect to (a) where the work of General Clerk No. 2 came from originally or (b) whether there ever was a causal flow and ebb of business at the location and a resulting flow and ebb of clerical work. If there were no other information in the case, the Board would have to conclude forthwith that this principle neither is applicable nor was violated by Carrier. However, the facts do show that, because there had never previously been a telegrapher's position at the Freight Office, the clerical work of General Clerk Position No. 2 could not have flowed from a telegrapher's position at said location. This fact raises the question as to whether Carrier violated the general flow-ebb principle when it transferred some of the clerical work to the newly assigned Telegrapher.

The answer to this question depends on the answer to another question: Given a previous flow and a subsequent ebb of railroad business and clerical work, can said work ebb in part to a position that did not exist when the flow took place? The proper answer appears to be that, although this situation is not usually embraced in the classical flow-ebb doctrine developed in the awards of this Division, there is no reason for supposing otherwise. To say "no" to this question would in certain cases bring the general flow-ebb principle into conflict with the principle that a telegrapher may be given suitable clerical work to the extent necessary to fill his idle time.

If when clerical work ebbs, it is not improper for some of it to be assigned to a non-clerk position that did not exist when a flow of clerical work

previously occurred, it follows that in the instant case Carrier did not violate the general flow-ebb principle.

Because, then, the Employes as petitioner and the Carrier as respondent have failed to supply information that would permit the Board to apply Interpretation 2 of Rule 69, and because Carrier is not shown to have violated the "incidental-proximate", the "idle telegrapher time", and the general flow-ebb principles, the Board is led to rule that the instant Claims cannot 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 Petitioner failed to establish the Claims.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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