

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

**GALVESTON, HOUSTON AND HENDERSON
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Claim that the Carrier violated the Clerks' Agreement on September 8, 1955 by assigning clerical work at Genoa, Texas, to employees not covered by said Agreement and failing and refusing to assign such clerical work to employees holding seniority rights thereto under the rules of the Clerks' Agreement.

(b) Claim for all wage losses sustained on behalf of employees involved in or affected by the violation. Losses to be determined by joint check of Carrier's payrolls and other necessary records.

STATEMENT OF FACTS: The regular station force at Genoa, Texas, consists of one Agent with hours 7:00 A. M. to 4:00 P. M.

Due to an increase in the movement of cars of sand and gravel into Ellington Field, the station force was increased to that of Telegrapher-Clerk, effective September 8, 1955, with hours of assignment 10:00 P. M. to 6:00 A. M.

The Telegrapher-Clerk is devoting the majority of his time each day performing clerical work.

POSITION OF EMPLOYES: In August 1955 we learned that an expansion program at Ellington Field was soon to begin and a considerable number of cars of sand and gravel would be moving via Genoa into Ellington Field. As a result of this information we wrote our letter of August 11, 1955 to Mr. W. E. Westrup, Superintendent of the Galveston, Houston and Henderson Railroad, which we submit as Exhibit "A".

matter of fact it was not even alleged, much less established, in presenting and handling this claim with the Carrier that any employee was involved in or affected by the alleged violation, qualified and available for and ready and willing to perform the service claimed. That in itself shows no employees are involved in or affected by the alleged violation and sustained any wage losses for which claim is made by the Organization to the Board.

The Carrier respectfully requests that the Board deny the claim in its entirety in the event it is not dismissed.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employees or their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner charges that the Carrier is violating the Agreement by assigning clerical work at its Genoa, Texas, station to employees not covered by the Agreement. The claim stems from the addition of a night trick telegrapher-clerk on September 8, 1955, to the Genoa station force.

This force regularly consists of one agent, with day trick hours, but since February 1941, a night trick telegrapher-clerk also has been employed from time to time when necessary. Until the date of this claim, for a period of over fourteen years, these employees—both the agent and the telegrapher-clerk—have regularly performed clerical work in addition to their telegraphy duties without objection from Petitioner or any other pertinent source. While that custom together with the Organization's acquiescence thereto would not be controlling in every case, it is highly significant in this situation since Rules 1 and 2 of the Agreement, upon which Petitioner strongly relies, do not specifically mention the position in question or its duties (see Award 7424), were in existence throughout the aforementioned fourteen year period and continued in the same form although the Agreements containing them were renegotiated during that time. See our Award 3603 and First Division Award 8249.

The two-hour provision of Rule 2, the strongest from the Petitioner's standpoint, does not affect the result since rather than standing for the principle of work exclusivity advocated by Petitioner, it simply classifies employees within the Agreement since it is not part of the Scope Rule. See Awards 615 and 754. Quite apart from that point, however, we find that a careful examination of the record fails to detect any competent evidence on the question as to how much of the telegrapher-clerk's working time is devoted to clerical duties. Certainly the self-serving letter between the General Chairman and Local Chairman of the Organization does not constitute competent evidence as to the accuracy of the letter's contents. Nor, in this factual situation, is Carrier's refusal to participate in a joint check of the position's duties the equivalent of evidence on the question of working time.

In the light of the foregoing, we are not satisfied that Petitioner has sustained the burden of proof and under the circumstances of this case, we

have no alternative but to deny the claim. In view of our conclusions, it is unnecessary to consider several other questions raised by the Carrier.

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; and

That the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of January, 1960.