

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated and continues to violate the Clerks' Rules Agreement when on July 1, 1954 it abolished Clerical Position No. 153 at Wahpeton, North Dakota and assigned the duties of the position to the Agent, an employe outside the Clerks' Agreement.
2. The Carrier shall restore the work to the scope and application of the Clerks' Agreement to the employes entitled thereto.
3. Employe John Lacher, occupant of the position at time of abolishment, and all other employes affected, shall be compensated for all losses suffered as a result of this violation retroactive to July 1, 1954.

EMPLOYES' STATEMENT OF FACTS: Prior to July 1, 1954 the Carrier maintained at Wahpeton, North Dakota a clerical position identified as No. 153, occupant John Lacher, clerical and non-clerical seniority date of September 10, 1946, assigned hours 8:00 A. M. to 5:00 P. M. with one hour for lunch, 11:30 A. M. to 12:30 P. M., daily Monday thru Friday with Saturday and Sunday as rest days, rate of pay \$13.456 per day.

The duties normally attached to the position prior to July 1, 1954 and performed by employe Lacher were as follows:

Check yard and make 146 report.

Maintain average agreement reports.

Revise carload and LCL waybills.

This claim was declined by Mr. C. P. Downing, Assistant to Vice President, who is the highest designated officer of the Carrier, on April 19, 1955. There is attached as Carrier's Exhibit "A" copy of Mr. Downing's letter dated April 19, 1955. In accordance with the provisions of Article V and specifically Section 1 (c) thereof, if this claim was to be further progressed, the employees were obligated to file their ex parte submission with your Honorable Board on or before January 19, 1956. It is the Carrier's position that if the employees did not file their ex parte submission in this case with your Honorable Board on or before January 19, 1956, this claim is barred.

There is attached as Carrier's Exhibit "B" statement showing the volume of station work at Wahpeton during the months of October, November and December 1954 as compared with the same three month period in the year 1948. It will be noted that as to freight received business, the freight charges decreased on an average of \$10,138.85 per month, the number of freight bills issued decreased an average of 272 per month or 49% and the LCL tonnage decreased an average of 87,359 pounds per month or 63%. The total station earnings at Wahpeton for the year 1954 decreased \$55,291.00 as compared with the total station earnings for the year 1953. The station earnings at Wahpeton have shown a decrease for each year since 1950. The total decrease in the station earnings for the year 1954 as compared with the year 1950 amounted to \$112,908.00.

There is also attached as Carrier's Exhibit "C" a copy of statement made by Agent R. S. Busk, dated May 27, 1955, which shows that he was appointed to the agency at that station on June 23, 1948 and that from that date until October 7, 1948 he was the only employee at the station and performed all of the station work; further, that when the clerk's position was established on October 7, 1948 he delegated various items of station work to the clerk to afford the agent the necessary assistance in connection with the station work. In this connection there was no clerical position in existence at Wahpeton Station from March 1, 1942 until October 7, 1948. During that period of time only the agent was employed at the agency and he performed all the station work.

The Agent, prior to October 7, 1948, performed all of the station work at Wahpeton and since that date the agent and the clerk have shared in the performance of the station work. The station work has at no time been performed exclusively by the station clerk nor can employees within the scope of the Clerks' Agreement lay exclusive claim to that work. It is the Carrier's position, therefore, that there occurred no violation of the Clerks' Agreement when, following the large decline in station earnings and LCL tonnage, which greatly reduced the station work, the clerk's position was abolished and the agent again performed all of the remaining station work.

The schedule rules do not support this claim and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: At the inception of the consideration of this Claim, we are met with the contention of the Carrier that it should be barred because:

(1) Not filed within the effective time limit set out in Article V, Section 1(c) of the August 21, 1954 Agreement.

(2) Notice has not been given to interested third parties.

The first contention is not well made. Awards of this Board, 7850, 8669 and 8764.

The second branch of the motion will likewise be denied.

The basic facts here are very much like those in Award 9219, and must be resolved upon the same principle.

The Claim of the Organization is that a part of Rule 1 (e) of the controlling Agreement has been violated. It reads:

"Positions within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules except in the manner provided in Rule 57."

Rule 57 is general in terms, headed "Date Effective and Changes," and does no more than to implement the heading. The effect of Rule 1(e) is that positions may not be abolished except as provided in the Rules of the Agreement.

Much is argued as to the meaning of the term "positions" as used in the rule, but the decisive issue here is whether the reduction of force at Wahpeton, North Dakota in July, 1954, by relieving the Clerk then assigned from duty violated any rule of the Agreement. That issue must be determined by answer to the question,—Was the work being done by the Clerk at Wahpeton when relieved his exclusive right to perform? Awards, this Board, Nos. 5318, 5662, 5867, 6393, 7387, 7784 and 8161.

Certain facts are not disputed.

A Clerk was assigned to the station at Wahpeton in October, 1948. He was relieved on July 1, 1954.

Prior to the assignment of the Clerk and subsequent to his release, Wahpeton was a one-man station handled by an Agent, who was the administrative head and in charge of the station. During these periods the Agent did all of the work at the station. The work increased to a point in October 1948 when a Clerk was needed to handle the business. But it does not appear that during his employment he alone did all of the clerical work at the station. At all times it was done interchangeably between the Clerk and Agent. Later the work decreased to such an extent that the Agent could again do all of the work. It was then that the Clerk was relieved and the operation of the office reverted to that which had obtained before the Clerk was assigned.

The decrease in the business of the station generally and, therefore in the work required to be done including the clerical service, is demonstrated by the record.

Comparing the months of October, November and December 1948 with like months in 1954 the number of freight bills issued decreased on an average of 272 each month; the LCL tonnage 63 percent or 87,359 pounds per month. The earnings at the station in 1954, as compared with those in 1950, were less by a total of \$112,908.

It is asserted that this decline in business and in the work to be done at the station is not material to the decision on this Claim. The purpose of showing this decrease in business is material as it reflects the good faith of the Carrier and the necessity, as a matter of managerial and business practice, of the action which was taken. If there were no decline in business or if the Carrier has taken from the Organization work which it had the exclusive right to perform the action would not be supported.

The proof does not support the contention of the Organization.

The action of the Carrier in reducing its force at Wahpeton, North Dakota by relieving the Clerk from duty did not violate the Agreement.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1960.