

Award No. 9821
Docket No. CL-8730

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND
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 at Marquette, Iowa when it utilizes Operators, employees not covered by the Clerks' Agreement, to call crews during the hours employees covered by the Agreement are not on duty.

2. The work of calling crews at Marquette, Iowa, which is performed by employees outside of the Clerks' Agreement, shall be returned to the employees covered by the Agreement in Seniority District No. 32.

3. Carrier shall be required to compensate Employee R. O. Hinkel for a call on December 31, 1954 and for each subsequent day that the Operators at Marquette, Iowa call crews.

EMPLOYEES' STATEMENT OF FACTS: Throughout the years the calling of crews at Marquette, Iowa has been a duty assigned to various positions and employees, including stowers, covered by the scope and application of the Clerks' Agreement.

Prior to December 25, 1954 the Carrier maintained two positions of Stowers at Marquette; one of which was assigned from 1 A.M. to 9 P.M., the other from 9 P.M. to 5 A.M. The calling of crews during those hours of assignment was a duty of the Stower positions.

Effective at the close of the shift on December 24, 1954, the stower position assigned from 1 A.M. to 9 A.M. was abolished. On December 27, 1954 the hours of assignment of the remaining stower position were changed from 9 P.M. to 5 A.M. to 11 P.M. to 7 A.M. Since that time the calling of crews has been performed by the stower during the hours of his 11 P.M. to 7 A.M. assignment and by the check clerk between the hours of 7 A.M. to 8:30 A.M. Between the hours of 8:30 A.M. and 11 P.M., the telegraph operators call the crews.

This claim was presented and appealed to the Carrier based on the contention that the Carrier, through its rearrangement of force at Marquette in December 1954, had assigned the work of calling crews between the hours of 9 P.M. and 11 P.M. to the operators. The only crews called during those hours are for Trains 761 and 63. Sometimes, depending upon the operation, the crews for those trains are called outside of that 2-hour period. Those crews are called in accordance with the time the trains are ordered and of course, the time of ordering is governed by the anticipated arrival of connections. We have shown that for a period of 12 days the crew for Train 761 was called between 9:00 P.M. and 11:00 P.M. on 8 occasions and the crew for Train 63 was called between those hours on 4 occasions. We have also shown that effective September 15, 1955 the starting time of the stower was advanced from 11:00 P.M. to 10:00 P.M. since which time on most occasions the stower has called the crews for those trains.

It is the Carrier's position that the work of calling crews at Marquette is not exclusively within the scope of the Clerks' Agreement and they cannot lay exclusive claim to the work of calling crews or even to the work of calling certain crews at Marquette and there can be no justifiable basis for any penalty being placed upon the Carrier by reason of the operators occasionally calling the crews for Trains 761 and 63 when the operators regularly call crews for other trains during their assigned hours and have done so for many years and also have, throughout the years on many occasions, called crews for Trains 761 and 63, depending upon the time those trains are operated.

As we have said, the agent, who has been located at Marquette since 1916, states the operators have called crews throughout all the years since 1916. Throughout those years there have been many changes in train schedules which have affected the time at which crews are called and as a result there have been many changes in the calling of crews as between the operators and those employes covered by the scope of the Clerks' Agreement.

Also as we have stated above, the work of calling crews at Marquette is shared by operators and employes within the scope of the Clerks' Agreement and no portion of that work is exclusively within the scope of the Clerks' Agreement. Under those circumstances and in accordance with Awards of your Honorable Board the employes within the scope of the Clerks' Agreement cannot be awarded an exclusive right to this work. The Carrier respectfully requests a denial award.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts of this case are not in dispute. At Marquette, Iowa, the Carrier had, prior to December 27, 1954, a station force consisting of an agent, first, second and third trick operators, two stowers with different hours, one a five day position, the other a seven day position and one check clerk on duty from 12:30 A.M. to 8:30 A.M. There has never been a Train, Engine and Yard Crew Caller position at Marquette. The calling of train crews at this station has been traditionally performed by the stowers, or other members of the Clerks' Organization, when such members were on duty. But for more than forty years, the operators have called train crews when no members of this Organization were on duty.

The Scope Rule of the parties' Agreement lists crew callers as one of the positions covered by the Agreement. And Rule 1 (e) provides in part that:

"Positions within the scope of this agreement belong to the employees 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."

Effective December 27, 1954, one stower position was abolished and the hours of the remaining stower position were changed to 11:00 P.M. to 7:00 A.M. From the record it is evident that since September 15, 1955, the calling of train crews at Marquette, Iowa has been performed as follows:

From 10:00 P.M. to 6:00 A.M. by the stower

From 6:00 A.M. to 8:30 A.M. by the check clerk

From 8:30 A.M. to 10:00 P.M. by the operators

Prior to December 27, 1954, the operators generally called crews for Trains 68 and 203, and on occasions the crews for Trains 761 and 63, while the stowers and check clerk generally called crews for about eight trains per day. Following December 27, 1954, the members of this Organization continued to call crews for eight or nine trains per day. And the operators continued to call crews for Trains 68 and 203, and about half the time the crews for Trains 761 and 63. In short, the amount of crew calling by the operators remains substantially the same as before December, 1954. Since the actual calling of crews at Marquette remains substantially the same, so far as the performance of this work by members of two organizations is concerned, it would be improper for this Board to upset a practice which the parties have permitted to prevail for at least forty years. There has been a mutual acceptance of this practice.

The parties have cited many awards. Primarily the contention on which this claim is based is that the involved work belongs to the Clerks exclusively, by virtue of the Scope Rule. This Board has given considered attention to this matter in a number of previous awards. Those which impress us as being the soundest precedents for disposing of the claim now before us are Awards 5404 and 6758. In these and earlier cases we have concluded that, where the practice has been to permit the calling of crews by employees not covered by this Organization's Agreements, the board should not disturb such established practice.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.