

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

(a) The Carrier has violated and continues to violate the rules of the Clerks' Agreement through its failure and refusal to establish clerical positions at the Carbona Agency to perform routine clerical work, and

(b) All employees adversely affected be compensated for wage loss sustained beginning June 18, 1955, and continuing until the violation is corrected.

NOTE: With reference to employees adversely affected, this is intended to mean, in the first place, furloughed employees who have been qualified and available, or in the absence of a furloughed employee, other employees who have been denied the opportunity of bidding for such a position, and who, as a result have suffered a wage loss, and whose position in turn would have been filled either by furloughed employees or by a regular employee doubling over. In the event your Honorable Board should rule that the name of a specific claimant must be designated, we then desire to insert the name of Mr. L. F. McAdams, and claim that he be paid a day's pay for each day of the violation as a penalty for the Carrier's action in failing and refusing to establish a position at Carbona to perform the necessary clerical work involved in handling cash books, checking yard and industry tracks, signing bills of lading, billing freight and other routine clerical work—such payment to continue until the violation here involved is corrected.

EMPLOYEES' STATEMENT OF FACTS: From time to time clerical employees have been used to perform the necessary clerical work at Carbona Station, and the first instance of which we have a record, reveals that Mr. Ralph E. Christie worked as a clerk at Carbona during the period April 11, 1944 to May 11, 1944 inclusive. Subsequent thereto the position of Bill and Rate Clerk at Carbona was advertised on Clerks' Circular No. 47-45, dated March 30, 1945, as shown in Employees' Exhibit "A", and this position was assigned to Mr. J. M. Rustan.

require Carrier to establish a clerical position at a point which is, for the greater part of the year, a one-man agency.

As Carrier has explained in its Statement of Facts, Carbona is a one-man agency where the traffic handled is negligible except during the perishable season which lasts from July through early November as a rule. During the balance of the year the small amount of traffic at this point is easily handled by the Agent. In the perishable season it has been Carrier's practice to establish a Telegrapher-Clerk position to assist the Agent and to handle certain wire reports which must be sent at the end of each day's business. The time of both of these employees is filled out by the addition of duties incidental and in proximity to their duties as agent and telegrapher respectively.

There is nothing in the Clerks' Agreement which can be relied on to support an allegation that the above described practice of handling the business at Carbona constitutes a violation of that Agreement. Carrier's position in this respect is amply supported by awards of your Board. For example, this position is succinctly stated in Award 4559 as follows:

"Ticket selling is clerical work and this Board has said that a Telegrapher with telegraphic duties to perform may properly perform clerical work, which is incident to or in proximity of his telegraphic work, to such an extent as to fill out the telegraphic assignment. See Awards 4288, 4355 and 4477 of this Division."

See also Award 7133 which cites Awards 4355 and 4559 with approval.

In conclusion, Carrier reiterates the following points:

1) The instant claim should be dismissed unless and until statutory notice of hearing is given by the Board to all parties involved in this dispute;

2) the claim should be dismissed inasmuch as it is a blanket claim too indefinite and vague to comply with the provisions of Article V of the Agreement of August 21, 1954;

3) the claim must be denied inasmuch as no violation of the Clerks' Agreement is involved in Carrier's practice of handling the business at Carbona Agency.

All of the above has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On August 17, 1955, the General Chairman of the Organization wrote to the Superintendent of the Carrier stating that:

"It has come to my attention that the Agent at Carbona is working in excess of four (4) hours a day performing routine clerical work, and in the performance of that work, he is required to leave his post and travel as much as six miles in order to check cars, sign bills of lading and seal carloads of freight.

"I respectfully request that a joint check be made of the work performed by the Agent at Carbona, and suggest that this check be

made Thursday, August 25, 1955, starting at 8:00 A. M., the beginning of the Agent's shift. * * *

The Superintendent refused the joint check as requested by the General Chairman.

A claim was filed requesting that a clerical position be established at Carbona and that all employees adversely affected be compensated for wage losses sustained beginning 60 days prior to August 17, 1955 and continuing until the violation is corrected.

The Carrier states that at Carbona, it has an Agent assigned to work 8 hours, 9:00 A. M. to 5:00 P. M., and a Telegrapher-Clerk assigned to work 8 hours, 5:00 P. M. to 1:00 A. M. There are certain duties performed by the Telegrapher-Clerk that can only be performed by an employee having telegrapher experience, such as, telegraphing market reports, CX, CX-2 and pick-up reports. In addition, this employee, as well as the Agent, worked with the train dispatcher by telephone, as well as telegraphing and relaying information from the dispatcher to the train and enginemen.

Carbona is a one-man Agency, and each year during the perishable season, it has been the practice to establish a seasonal Telegrapher-Clerk position in order to assist the Agent with the increased business caused by the shipment of perishables. It is necessary that this seasonal position be a telegraphic position, because of the need for sending certain messages at the close of the day's billing. The balance of the day's work for this Telegrapher-Clerk position is filled out with clerical work incidental to or in proximity to the work of the telegrapher. The Agent also fills out his day by doing some clerical work.

Scope Rule 1 and Rule 40(f) apply only where work is removed from the scope of the Agreement, or a position is abolished, and the remaining work increases to 3 hours or more per day. Rule 40(f) is not a yardstick or guide to be used in the creation or establishment of positions, rather, it is a yardstick for the abolishment and re-establishment of covered positions.

The employees have failed to show that telegraphic duties are not required of the Agent and the Telegrapher-Clerk, neither did they show that a clerical position had been abolished and the remaining work exceeded 3 hours and that it had subsequently increased to 3 hours or more.

The Board finds that both the Agent and the Telegrapher-Clerk performed telegraphic duties. The claim must be and is hereby denied inasmuch as there is no violation of the Clerks' Agreement herein involved in Carrier's practice of handling the business at the Carbona Agency.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1962.