

Award No. 10457

Docket No. CL-10322

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Robert J. Wilson, 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 violated and continues to violate the rules of the Clerks' Agreement by its unilateral action in removing the work involved in selling tickets and handling pullman space from clerical employes at Wendover, Utah and transferring such work to employes outside the scope of the Clerks' Agreement, and that

(b) The Carrier has violated and continues to violate the rules of the Clerks' Agreement through its action in permitting and/or requiring an employe outside the scope of the Clerks' Agreement to perform routine clerical work in connection with the handling of the business of the Freight Station at Wendover (particularly the billing of outbound shipments, and the handling of baggage and mail on trains 1 and 2), thereby removing such work from employes covered by the Clerks' Agreement.

(c) Mr. P. A. Nuffer, Cashier at Wendover, Utah, and/or his successor or relief, is entitled to and shall now be compensated for eight hours at the overtime rate for each day on which Agent L. P. Waters and/or other employes outside the Agreement, have performed the routine clerical work involved, including the billing of outbound freight etc.; such claim to commence July 2, 1957, and continue until the violation hereinvolved is corrected and the work properly performed by employes within the scope and operation of the Clerks' Agreement.

(d) The work involved in the selling of train tickets and pullman space and the handling of baggage and mail at Wendover, Utah be restored to employes within the scope of the Clerks' Agreement, and that the employes on duty in the Yard Office at Wendover (namely, Miss Esther Witt, Messrs. A. J. Norgaard, James M. Sizemore, K. F. Byrne and/or their successors) be now compensated for eight hours at the rate of time and one-half for each day of the viola-

tion, beginning July 2, 1957, and continuing until the violation here-involved is corrected.

EMPLOYEES' STATEMENT OF FACTS: Beginning with Clerks' Circular No. 406, the position of Ticket Clerk at Wendover, Utah was advertised to employes within the scope and operation of the Clerks' Agreement and carried the following qualifications:

"Must be familiar with passenger, baggage, and pullman tariffs and understand handling and sale of tickets, and handling of passenger and pullman company accounts and reports."

The position was first assigned to Mr. M. J. Isola as shown on Clerks' Circular No. 407, dated July 13, 1942. Thereafter the position of Ticket Clerk at Wendover, Utah, with hours 9:00 A. M. to 6:00 P. M., with an hour meal period, was advertised to clerks from time to time as a seven-day assignment. The last record we have on which this position was advertised was on Clerks' Circular No. 924 dated April 19, 1946.

The January 1, 1944, Seniority Roster showed the clerical jobs existing at Wendover, Utah, and the employes holding them at that time, to be:

F. K. Byrne	Clerk-Baggage
F. I. Holmes, Sr.	Cashier
B. M. Morrow	Ticket Clerk
F. L. Giffen	Dem. Clerk & Yard Chk.
M. K. Cronin	T. M. & R. M. Clerk
E. E. Ehlers	General Clerk
J. O. Hanneman	Warehouse Foreman
E. M. P. Peterson	Crew Caller
F. M. Jones	Yard Clerk
V. Gutelius	Crew Caller
L. A. Schweppe	Clerk-Warehouseman
G. N. Green	General Clerk

On Clerks' Circular No. 622, dated February 18, 1944, a second position of Ticket Clerk was established at Wendover, Utah, with hours of 1:00 P. M. to 10:00 P. M., and an hour meal period. Thus, the work of selling tickets and handling business in connection therewith, between the hours of 9:00 A. M. and 10:00 P. M., was handled for some time by clerical employes. Subsequently the positions of Ticket Clerk were abolished. A claim was thereafter filed with Superintendent Lynch through the General Chairman's letter of August 30, 1956, reading as follows:

"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 by its unilateral action in removing the work involved in selling tickets and handling pullman space from clerical employes at Wendover, Utah and transferring such work to employes outside the scope of the Clerks' Agreement, and that

It is clear that the duty of preparing waybills has neither been assigned exclusively to clerks nor performed exclusively by them at Wendover. In these circumstances the instant claim, which can be based only upon the theory that clerks have acquired an exclusive right to perform this work, is without validity. In order for clerks to be held to possess the exclusive right to this work, it is incumbent upon the petitioner to show either that Carrier has assigned said work exclusively to clerks on this property or that clerks have, over a long period of time with the knowledge of the Carrier, performed the work exclusively. Neither of these can be shown because neither occurred; accordingly, the claim must fall.

Without prejudice to Carrier's position that this claim of the exclusive right to prepare waybills is without merit and should be denied, Carrier desires to point out that the claim for eight hours' pay at the overtime rate is contrary to the decisions of your Board referred to above in that part of this submission where the claim based on ticket selling is discussed.

In conclusion, Carrier reiterates that:

- (1) The claim should be dismissed account failure of the Board to give notice to all parties involved or,
- (2) the claim should be denied for the following reasons:
 - (a) The portion of the claim concerning ticket selling is contrary to the decisions of your Board concerning payment for time consumed in performance of the disputed work (Award 5790) and payment at the straight time rate for work not performed;
 - (b) clerical employes have no exclusive right to sell tickets;
 - (c) the portion of the claim concerning handling baggage and mail was not raised on the property;
 - (d) the claimants have not acquired the exclusive rights to prepare waybills;
 - (e) the claim for eight hours' pay at the overtime rate account the Agent performing billing is contrary to the awards of your Board to the same extent as stated in paragraph (a) above.

All of the above has, in substance, been presented to the Employees.

OPINION OF BOARD: July 13, 1942, the Carrier established the position of Ticket Clerk at Wendover, Utah. The position was advertised to Clerks from time to time and the last record of it being advertised was April 19, 1946.

February 8, 1944 a second position of Ticket Clerk was established at Wendover. The work of selling tickets and handling business in connection therewith between 9:00 A. M. and 10:00 P. M. was handled by clerical employes. Subsequently, the positions of Ticket Clerk were abolished on May 8, 1946.

The Carrier started operation in Wendover in 1910 and telegrapher agents handled the work of ticket selling, Pullman space and other clerical duties until establishment of Ticket Clerks in May 1942. After the abolishment of the positions of Ticket Clerks in May 1946 the work was taken over by telegrapher agents and the telegrapher agents have handled the work for the Carrier since that time.

On August 30, 1956 this Claim was filed asserting that the Carrier is violating the Agreement in removing the work of selling tickets and handling Pullman space from clerical employees and transferring such work to employees outside the Clerks Agreement. They also claim the exclusive right to perform routine clerical work in connection with the handling of business of the Freight Station at Wendover (particularly the billing of outbound shipments and handling of baggage and mail).

Wendover, Utah is a small un-incorporated area of approximately 500 people. Up to the war there was very little passenger traffic. During the war the Air Force constructed a Military Base and because of this activity Wendover traffic greatly increased. After the war activity at the Base was drastically curtailed and traffic as a result was greatly reduced.

The pertinent part of the Scope Rule in this case reads as follows:

"Rule 1. These rules shall govern the hours of service and working conditions of all of the following class of employees, subject to the exceptions noted below:

"(1) Clerks.

"(2) Other office, store and station employees, such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, operators of certain office or station appliance devices, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors, and other employees performing similar service.

"(3) Laborers employed in and around stations, storehouses, warehouses, ice houses or ice docks.

"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 64."

Rule 4 of the Agreement in part reads as follows:

"Rule 4. Employees who regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements, and similar work, and to the operating of office and mechanical equipment and devices, in connection with such duties and work shall be designated as clerks. The above definition includes Station, Storehouse, and Warehouse Foremen, Checkers, Deliverymen, Ticket Sellers, and Yard Checkers."

In order to reach a decision in this case it is our opinion the Board must first determine as to whether or not the clerks have the exclusive right under the contract to perform the work which is the subject of this dispute.

We have carefully studied the Agreement and it is our opinion that it does not specifically grant to the clerks the exclusive right to perform the work here in question.

It has been held by this Board that where an Agreement does not grant the exclusive right to perform the work that we must look to practice and custom to determine the issue and that the burden of proof is with the Claimant.

The record shows that the telegrapher agents performed the work of selling train tickets and pullman space etc. for many years prior to the time ticket clerks jobs were established and the Clerks Agreement became effective on the property. Also after the work declined and the ticket clerk's positions were abolished in 1946 the work was returned to the telegrapher agents who have performed it for many years without protest by the clerks. Likewise it appears that over the years the agent has performed work of handling out-bound freight baggage and mail at the station as incidental to his job.

Since the work here involved is not the exclusive work of the clerks under the Agreement and since in our opinion the Claimant has failed to prove that it was reserved exclusively to them by custom and practice we must deny the claim.

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 28th day of March 1962.