

Award No. 10529

Docket No. CL-10465

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY (LINES WEST OF MOBRIDGE)**

STATEMENT OF CLAIM:

(a) The Carrier violated and continues to violate the Rule of the Clerk's Agreement at Malden, Washington, by requiring employees outside of the Clerk's Agreement to **perform the work of (1) calling crews (2) making yard checks and (3) inspecting, diverting, billing carloads of grain daily.**

(b) That, as a penalty, Donald B. Sharpe, Clerk be paid eight hours at pro rata rate commencing Monday, March 18, 1957, and each workday thereafter Monday through Friday of each week, also eight hours at punitive rate commencing Saturday, March 23, 1957, and Sunday, March 24, 1957, and the Saturdays and Sundays of each week thereafter until the rule violation is corrected.

EMPLOYEE'S STATEMENT OF FACTS: In 1946, when the last clerk's position was abolished at Malden, Washington, the Clerical work which still existed was given to the Agent and telegraphers to perform. In recent years the Station Force consisted of an Agent, with hours of 8:00 A.M. to 5:00 P.M., first trick telegrapher with hours of 4:00 P.M. to midnite and second trick telegrapher with hours of midnite to 8:00 A.M.

Since this station, Malden, Washington, is just a freight and change of crew station, and one crew of trainmen and enginemen bring in the freight trains from the east or west and another crew comes on duty and switches the yard and makes up a train to go east or west, there is always crews to be called and the Agent is given one hour overtime daily and nine (9) hours at overtime on Saturdays for handling the Boards on advice he receives from Spokane, since this Board at Malden is just a "Sub" Board of the Spokane Board. When Agent is not on duty, then the Telegraphers call the crews by telephone, however, if the Agent and Telegraphers cannot secure the crews for these trains by telephone, then they (Agent and Telegraphers) then use their personal cars and go in search of the trainmen and enginemen, forsaking their instruments to do so. Since the Agent and Telegraphers must use their personal cars for calling crews, they are allowed mileage expense account

serves the work for the Clerks. Awards 6141, 6357, 6444, 6937, 7047, 7048. While some of the scope rules in the foregoing cases provide in effect that positions may not be removed from the agreement except by negotiation, the rule here involved provides that **positions or work** may not be removed except by agreement. The use of the term 'work' in addition to the term 'positions' must be given meaning. We must presume that the propriety of the rule as written was fully considered by the parties before it was agreed upon. The work here involved was taken from Clerks and given to Telegraphers without negotiation. It is a violation of the rule."

The Carrier agrees that the use of the term "work" in addition to the term "positions" must be given meaning. During the negotiations which led to the revised rules effective January 16, 1946 on this property the employees proposed a rule containing the words "positions or work". The Carrier refused to place the word "work" in the Agreement and it will be noted the language of the third paragraph of Rule 1-(e) does not contain the word "work".

Attention is also invited to Third Division Award 8256 involving a claim on this property of a warehouse foreman that he was entitled to perform the work of handling mail and baggage on and off Train No. 11 at Spencer, Iowa on Sundays in which the claim was denied on the basis that no "position" was removed from the application of Clerks' Schedule Rules and that the third paragraph of Rule 1-(e) did not contain the word "work".

The claim is made on behalf of Donald B. Sharpe for 8 hours at pro rata rate Monday through Friday, commencing Monday, March 18, 1957, and 8 hours at punitive rate, commencing Saturday, March 23rd and Sunday, March 24, 1957.

Clerk Sharpe is and has been since the original date of these claims, fully employed as a yard clerk at Spokane Yard, which is approximately 40 miles by highway from Malden and much farther by railroad. Clerk Sharpe has lost no time as the result of the work involved in this claim being performed by the Agent and telegraph operators at Malden and he obviously could not have worked in both places at the same time.

The Carrier holds the foregoing clearly shows this claim is without merit and urges that it be denied.

All data contained herein has been presented to the employees.

OPINION OF BOARD: It is the contention of the Claimants that in 1946, the last clerk's position at Malden, Washington, was abolished and the clerical work of **calling crews** and **making yard checks** was given to the Agent and telegraphers to perform; that, though there were always crews to be called, the clerical work had become almost negligible in 1946 — Malden became a freight and change of crew station.

Claimant further contends that prior to November 1, 1956, the work of the station crew had gradually increased and that on November 1, 1956, the work of **inspecting, diverting, billing carloads of grain daily** which had formerly been assigned to clerks at Spokane, Washington, was taken away from the clerks at Spokane, Washington and assigned to the Agent and telegraphers at Malden, in fact, doing away with work rightfully belonging to the clerks to perform and giving it to others than clerks; that in addition to the work transferred to Malden from Spokane the work of calling crews and making

yard checks, ordinarily performed by clerks being performed by the station crew, has resulted in the Carrier having the station crew practically doing all the clerical work of the station to the exclusion of the clerks and in violation of the Agreement.

In response to the claim of the Petitioner and in denial of Petitioners claim the Carrier relies on the fact that there had been no clerical employe at Malden for over ten years and that since the clerical positions at Malden were abolished the station crew consisting of the Agent and telegraphers have been doing all the station work including the alleged clerical work of calling crews and making yard checks; Carrier further contends that when State Grain Inspection was instituted at Malden, it was for the purpose of avoiding hauling cars of grain into Spokane and then backhauling them with approximately two days delay; that the work of **inspecting diverting billing carloads of grain** was then assigned to the station crew at Malden as there were no clerks at Malden and this did not involve any substantial increase in the work of the station crew; that there was no reduction in clerical forces at Spokane as a result of the grain inspection being made at Malden after November 1, 1946; that there has been no violation of the Agreement.

It is significant that the work of **inspecting diverting carloads of grain** at Malden became necessary through the transfer of the State Grain Inspection to Malden and was not due to any arbitrary action on the part of the Carrier.

It is conceded by the Petitioner that when the clerks positions were abandoned at Malden in 1946 the clerical work involved was practically nil and this condition remained static for a number of years. Claimant has also agreed that it had generally been the practice at stations where no clerk was employed for the Agent and/or telegrapher to call crews and make yard checks.

This Board has held on many occasions the following rules to be controlling with relationship to the work of clerks and telegraphers:

"It is a matter of common knowledge in the railroad industry that for many years before the clerks' organization came into existence, telegraphers have been required and have had the right to perform clerical duties to the extent necessary to fill out their time when not occupied with their telegraphic duties.

* * * * *

"We think the rule stated in Award 615, as limited by Award 636 and other subsequent awards means that telegraphers with telegraphic duties to perform have the right to perform clerical duties to the extent necessary to fill out their time, but that said clerical duties must be incidental to or in proximity with their work as a telegrapher." Award 4288 — Carter.

The work of **inspecting diverting billing of carloads of grain** was in the proximity of telegraphic work being done at Malden. There remains, then, the question of whether the clerical duties performed were greater than necessary to fill out the telegraphers' time.

The proof here submitted by Petitioner does not support the claim. No effort has been made by **competent evidence** to break down the time devoted

to clerical work by the station crew at Malden nor the time required by clerks at Spokane to perform the clerical work of inspecting diverting billing carloads of grain. We have only the bare statement that at Malden there was over 7 hours of clerical work performed by other than clerks. In Petitioners submission, reference is made to a letter between two members of the Organization which contains an alleged time check of work done by the station crew at Malden on March 18, 1957. Carrier denies that it was aware of this letter containing the alleged time check and claims that it was never raised nor called to the attention of the Carrier on the property. The record fails to disclose that the aforesaid letter or time check was ever called to the attention of the Carrier on the property. Consequently, under the Railway Labor Act and rules of this Board, we have no right to consider it and must disregard it.

As was stated in Award 10007 — McMahon — "This Board cannot speculate as to what the true facts may be, nor can we reach out and reconcile the meager facts which are in conflict here as to enable us to arrive at a proper conclusion."

For the foregoing reasons, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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 18th day of April 1962.