

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD-SOUTHERN DISTRICT

STATEMENT OF CLAIM:

1. That the Carrier violated the current Clerks' Agreement when October 24, 1957 it transferred position of Operator-Wire Chief from the Passenger Station at Mt. Carmel, Illinois to the TJ Yard Office located approximately eight tenths of a mile, a position not within the Clerks' Agreement, and concurrently therewith assigned to the Operator-Wire Chief duties which previously were performed by Yard Clerks.

2. That on January 1, 1958 the Carrier abolished the Operator-Wire Chief position and bulletined two new Operator positions at Mt. Carmel, Illinois yard office, assigning such duties which previously were performed by Yard Clerks, i.e., the operating of teletype and I.B.M. machines.

3. That the duties necessary in connection with the operation of the teletype and I.B.M. machines be assigned to the yard clerks, and the two positions necessary to the efficient operation of the mechanized car reporting system be bulletined to the Mt. Carmel, Illinois clerical seniority roster.

4. That Mr. Richard K. Hockgeiger and Mr. Jess Goad, extra clerical employees at Mt. Carmel, Illinois, and such other employees who may be affected through the application of the rules and working conditions agreement be compensated for all wage losses sustained.

EMPLOYEES' STATEMENT OF FACTS: In December, 1954 the New York Central System expanded its communication system to include a system of reporting car movements on a yard-to-yard basis, and simultaneously directed certain service bureaus to be established at New York, N.Y., Cleveland, Ohio, Detroit, Mich. and Indianapolis, Ind.

Award No. 5968, covering claims progressed by the B. of R. & S.C. on this property at Danville, Illinois, also sets out the position of the Board. In this dispute, a clerical position in the freight house was abolished March 16th, 1950 and part of the duties of the position absorbed by remaining clerks in the freight house—remainder of the duties being absorbed by a ticket clerk (under the Telegraphers' Agreement) working in the depot. The performance of ticket clerk and clerical duties required the ticket clerk to work both at the depot and freight house—approximately 1600 feet apart. On January 16th, 1951 the depot was closed and the ticket agent was moved to the freight house and became a part of the force at that point. Your Board sustained claims up to the time depot was closed, but denied the claims after that date with the following comment—

“While ordinarily a telegrapher may fill out his day with clerical duties, this situation does not fall into that line of reasoning. Here, the distance between the two offices was about 1600 feet. We believe that such a distance takes the work out of the proximity of his usual place of performing work of his assignment. * * *

“We believe that there is no basis for claim after January 4, 1951, our opinion being that the two offices were in close proximity (the same building). The ticket agent was also apart of the general station force, reporting to the supervisory agent.”

CONCLUSION

From the facts and evidence hereinbefore presented and awards and court cases cited, it has been conclusively shown that;

(1) The above claim involves a third party (O. of R.T.) and is, therefore, a dispute over which the National Railroad Adjustment Board does not have jurisdiction and could not, in any event, make a binding and legal finding without due notice to the third party;

(2) There has been no violation of the Schedule Agreement as to the manner in which Carrier has acted; and

(3) Awards of your Board substantiate the Carrier's contentions and action.

Accordingly, Carrier requests that if the claim is not dismissed for lack of jurisdiction, that your Board deny it in its entirety for lack of merit or agreement support.

Organization has been fully informed as to Carrier's position through correspondence and conferences on the property.

OPINION OF BOARD: Claims here are premised on the allegation that Carrier violated the Clerks' Agreement, when on October 24, 1957, it transferred an Operator position at Mt. Carmel, Illinois from the passenger station to the T.J. Yard Office, and resulting in the Yard Office

Operator, performing clerical duties previously performed by employees covered by the Clerks' Agreement.

On January 1, 1958, it is alleged Carrier abolished the Operator it had transferred to the T.J. Yard Office, and bulletined two new Operator positions at the yard office and assigning duties previously performed by Yard Clerks, covering the operation of teletype and I.B.M. machines to the Operator position covered by the Telegraphers' Organization.

For such violations by Carrier, the Organization requests this Division to require Carrier to bulletin two positions, to absorb the clerical duties performed at T.J. Yard by employees of the Telegraphers' craft, and to compensate two named employees and other employees so affected for all wage loss concerned.

Carrier denies the allegations as made by the Organization, and contends that such clerical duties performed at T.J. Yard Office, was properly performed by employees covered by another Agreement with the Telegraphers' craft. That when the Operator-Clerk positions were assigned to T.J. Yard Office, there were telegraphic duties required to be performed by Operators, and that the performance of clerical work by these employees, was within the prerogative of management, to determine whether such clerical work to be performed, was incidental and proper in filling out the tour of duty of such employees, where the transmission and receiving of messages did not require the full time of their assigned hours. The work required of the operator in transmitting and receiving messages belonged exclusively to the Telegraphers. This Division has determined in numerous cases, that Carrier has a right to require clerical work to be performed, as is involved in the claims here, by the Operator, in order to fill in his daily assignment, when his full time is not required in performing his telegraphic duties.

We are of the opinion the record here before us, does not support the contentions of the Organization. There is no proof in the record here that clerks have the exclusive right to perform the work complained of, as provided by the Scope Rule of the Agreement. Nor does the record support any contention that any employees of the Clerks have suffered any loss of work or compensation to employees of another craft.

The claim should be denied.

The Division is giving no consideration to the jurisdictional question raised by Carrier in view of Award Nos. 10422 and 11100.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1963.