

Award No. 11336

Docket No. CL-11075

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the Current Clerical Agreement when, effective May 17, 1958, they abolished two (2) positions, the Cashier and the Night Yard Clerk, seven days per week, at Caldwell, Kansas, and reported they were assigning the duties of calling train and engine crews, checking the Yard, checking trains, preparing bills for various trains, and making various Cashier and clerical Yard reports, also janitor work, to the Agent-Telegrapher, and second and third trick Telegraphers, employees not covered by the clerical Agreement.

(b) Carrier shall be required to restore positions and work of the Cashier and Night Yard Clerk at Caldwell, Kansas, which were improperly removed from the scope and rules of the current clerical Agreement to employees covered thereby.

(c) Claim that R. A. Hudspeth, Cashier, rate \$398.98, J. J. Nespor, Night Yard Clerk, rate \$389.22, and Relief Clerk, Ralph K. Seeley, shall be paid for eight (8) hours per day in accordance with their claims filed, effective May 17, 1958, until the violation has been corrected; *also, any other clerical employees who were adversely affected by this violation of the clerical Agreement shall be reimbursed, retroactive to the date they were affected.

(The above rates to be adjusted in accordance with Cost-of-Living increases and General Increases since May 17, 1958.)

***NOTE:** Reparation due employees to be determined by joint check of Carrier's payrolls and such other records that may be deemed necessary to establish proper claimants.

EMPLOYEES' STATEMENT OF FACTS: Caldwell, Kansas, is a Terminal on the Chicago, Rock Island and Pacific Railroad, where Passenger and Freight Train and Engine Crews tie up at the end of their tour of duty and also operate out of Caldwell, Kansas.

The employees are seeking to have your Board sustain their claim whereby the Carrier will be required to restore the clerical positions and compensate the claimants for each day since the position was abolished.

We have shown that your Board has consistently held that this Carrier has the right under the applicable Clerks' Agreement to assign clerical duties to telegraphers to fill out the hours of their assignment. We did not violate any rule of the Clerks' Agreement.

Even if claim had merit, which we deny, we submit that one of the claimants in this case, Ralph K. Seely, even if his position had not been abolished, would not have been available for work on which claim is based because since August 1, 1958 he has been superannuated account physical disability and effective May 25, 1958 was granted a disability annuity from the Railroad Retirement Board effective May 25, 1958. Therefore, he has not been injured in any respect in loss of earnings. In any event, if he were not superannuated, he would be obliged to exercise his seniority rights and would have secured a position paying him as much or more per month than position abolished and, hence, here, too, he would not have suffered any monetary loss as he could not work two positions at the same time.

We submit on basis of the facts in this case there was no violation of the agreement nor have the employees produced any evidence of loss by the claimant, nor basis, under the rules, and we respectfully request denial of the claim.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is another claim arising from the abolishment of certain positions under the Clerks' Agreement and the transfer of the remaining work of those positions to others not covered by that Agreement.

The record poses an irreconcilable question of fact when it is alleged, (and denied), that some of the clerical work was eventually transferred to a section laborer and a contract drayman. On the state of the record before us the Board is unable to resolve this issue. It is clear, however, that at the time the positions were abolished the work was given to telegraphers. Our decision here, therefore, is limited to a consideration of the merits of the claim in the light of this established fact.

Written notice of the pendency was served on the Order of Railroad Telegraphers. It declined to participate in this proceeding. Accordingly, the Division having complied with the requirements of Section 3, First (j), of the Railway Labor Act, we may now consider the claim on its merits. (Awards 10531, 11209).

The case before us is not one of first impression on this particular property. As is stated in the Employees' Submission, the same issue was raised from substantially similar facts in Docket Nos. CL-9973 and CL-10214, involving these parties and the identical Scope Rule of the Clerks' Agreement in effect on this property. Award 10741, in Docket No. CL-9973, denied the claim there primarily on the grounds that the transfer of the remaining work to telegraphers was proper "within the frame work of historically established exceptions" to the Scope Rule of the Clerks' Agreement, and cited Award 10301 (Docket CL-10214) as "an especially persuasive precedent."

It appears to the Board these recent decisions should control the disposition of the instant case under an application of the doctrine of stare decisis — stand by decisions and do not disturb settled matters.

Accordingly, this claim will 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 26th day of April 1963.