

Award No. 11613
Docket No. CL-11550

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

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

(a) Carrier violated the rules of the current Clerks' Agreement at Pauls Valley, Oklahoma, when on June 12, 1957, it abolished the General Clerk Position No. 305 and assigned certain duties of this position to that of a Telegrapher, who holds no seniority rights under the Clerks' Agreement; and,

(b) Carrier shall now restore all such work to employes covered by the scope and operation of the Clerks' Agreement; and,

(c) T. M. Webb and C. C. Westbrook, Jr., Cashier and Ticket Clerk at Pauls Valley and/or their successors, if any, shall now be paid in addition to any amount already received, four (4) hours per day at time and one-half at the rate of their respective positions from April 10, 1958, forward, until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: October, 1954, Carrier moved the Telegrapher Position from Gulf Junction to the Freight Station at Pauls Valley, Oklahoma. Gulf Junction is located one mile by rail, four miles by highway, from the Freight Station at Pauls Valley, Oklahoma. Prior to October, 1954, there had not been a Telegrapher Position in the Freight Office at Pauls Valley. No telegraph service employe having been assigned to work at Pauls Valley prior to October, 1954, none of the clerical and related work was ever performed by telegraph service employes at Pauls Valley.

June 12, 1957, Carrier abolished General Clerk Position No. 305 and assigned the preponderance of the duties from this position to the Telegrapher-Clerk. The duties assigned to the telegraph service employe consisted of answering telephone, handling demurrage and average agreement books, making postal notices of cars received, selling tickets, loading mail, making wheel reports and switch lists, delivering freight to draymen and making LCL and Carload Bills and in addition to the above he is required to check Pauls Valley and Gulf Junction Yards which in itself requires approximately one and one-half hours each day and encompasses a 6.2 mile round trip.

which requires or contemplates the revision of any rule or rules in that agreement, therefore, this rule has no bearing on the Employees' claim.

It will thus be obvious to the Board that the rules cited by the Employees do not support their claim.

It will also be noted that the Brotherhood's General Chairman, in the penultimate paragraph of his letter of October 8, 1958, to the Carrier's highest office of appeal, quoted in full on pages 12, 13 and 14 hereof, contended it was improper to relieve a position on its two rest days after said position had been abolished. Contrary to the General Chairman's position, the occupant of Rest Day Relief Position No. 17 was not performing rest day relief on Tuesday and Wednesday of each week during the period from June 12, 1957, to February 22, 1958, but was simply performing "other work on other days" to fill out the five-day assignment of Relief Position No. 17, in pursuance of Article VI, Section 10-e of the "Supplemental Agreement". In this connection, it is interesting to note that no protest was filed with regard to the aforementioned feature until the Rest Day Relief Position No. 17 was abolished on February 22, 1958, which made it unnecessary to fill out the five-day work week assignment of former Position No. 17.

Without prejudice to its position, or any previous argument set forth herein, the Carrier desires to call attention to the fact that the Employees' claim for penalties in the instant dispute is excessive in that it ignores the well established principle, consistently recognized and adhered to by the Board, that an alleged right to work is not the equivalent of work performed under the overtime and call rules of an agreement. In this respect, see Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, and 5967.

In conclusion, the Carrier respectfully reasserts that the Employees' claim in the instant dispute is entirely without merit or support under the governing agreement rules and should be either dismissed, remanded or denied in its entirety for the reasons set forth herein.

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: An examination of the record in this case shows that the work assigned to the Telegrapher was incidental to his work and that this type of duty has been done previously by men covered under the Telegraphers Agreement on this property. For this reason a denial award is in order.

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 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 12th day of July 1963.