

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

TEXARKANA UNION STATION TRUST

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

(1) That Carrier violated the Clerks' current Agreement at Texarkana Union Station when, effective May 11, 1958, it nominally abolished the 7:30 A. M., to 3:30 P. M., Ticket Seller position, occupied by Mr. S. R. Carpenter, and turned the work thereof over to the Ticket Agent, Mr. M. C. Shellman, for performing.

(2) That Mr. J. H. Pearson, and/or his successor, or successors, be compensated for the difference between that he earns as Baggage Clerk two days each week and that of Ticket Seller five days per week, for each week, beginning with Monday, May 12, 1958, and continuing until the violation is corrected.

(3) That Mr. H. P. Copeland, and/or his successor, or successors, be compensated for the difference between that he earns as Mail and Baggage Handler five days each week and that of Mail and Baggage Handler four days per week, Baggage Clerk one day per week, and Ticket Seller two days per week, for each week, beginning with Monday, May 12, 1958, and continuing until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Mr. S. R. Carpenter, whose Group 1 seniority dates from June 6, 1926, and the oldest employe in point of service on the Group 1 seniority roster, has for many years occupied the 7:30 A. M., to 3:30 P. M., Ticket Seller position, and Mr. J. H. Pearson, whose Group 1 seniority dates from October 1, 1943, occupied the 11:30 P. M., to 7:30 A. M., Ticket Seller position. Both of those positions, as well as the other position, working 3:30 P. M., to 11:30 P. M., are commonly referred to as Ticket Clerk positions and are so indicated on the seniority roster which lists the Group 1 employes as "Group 1 — Ticket & Baggage Clerks".

as alleged. The present General Chairman was a member of that Board, and Judge Frank P. Douglass was its chairman and neutral member.

Thus it is shown that this Brotherhood, which has in the past abandoned, as worthless, many similar claims on this property and on the El Paso Depot, has tried and lost similar claims on the home roads of both the personnel officers and the General Chairman involved in this case. It would seem to be clear, therefore, that there is no practice, agreement, reason or authority preventing the Ticket Agent from continuing to perform his work, whether or not he has a Ticket Clerk on duty to help him. It is his work and always has been, and the Brotherhood has no such monopoly as is alleged.

For the reasons stated, the Carrier respectfully requests the Board to dismiss or deny all claims involved in this case.

All known relevant argumentative facts and documentary evidence are included herein. All data in support of Carrier's position has been presented to the employes or duly authorized representative thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In April 1958, the following group of positions were maintained at Texarkana Union Station:

- 1 Ticket Agent (not covered by the Agreement) — days.
- 3 Ticket Clerks, 7:30 A. M.-3:30 P. M., 3:30 P. M.-11:30 P. M., 11:30 P. M.-7:30 A. M.
- 1 Baggage Clerk, 7:30 A. M.-4:00 P. M., Monday-Friday
- 1 Relief Assignment (covering Ticket Clerk and Baggage Clerk positions)
- 1 Extra Man

In May 1958, when the daily number of daytime trains out of Texarkana had fallen to four, Management eliminated the first shift (7:30 A. M. 3:30 P. M.) Ticket Clerk position. Thereafter Ticket Agent M. C. Shellman performed all Ticket Office work on days (except Sunday, when the office was covered by Relief Ticket Clerk G. C. Ellette, Jr.).

Petitioner believes this action violated Rule 1 -- Scope (and, consequently, other rules as well) by removing Clerks' work from the Agreement. The Rule provides in part:

"These rules shall govern the hours of service and working conditions of the following employees:

"Group (1) Clerks . . .

* * * * *

"This agreement shall not apply to the following positions:

"Ticket Agent, . . ."

It has become a well-accepted doctrine of this Division that work exclusively within the coverage of an agreement may not, normally, be assigned to persons outside that agreement. The question to be determined, in any

given case, is whether the disputed work is, in fact, the exclusive property of employes covered by the agreement. Under Scope rules similar to the one here, this becomes a question of fact in the determination of which history, custom, tradition and past practices of the parties assume paramount significance.

What are the facts here? The record reveals:

1. In early 1931, with 44 trains in and out of Texarkana each day, the force consisted of one Ticket Agent (B. Beck) and three Ticket Clerks. (In 1930, the station had become a separate Carrier, but continued to apply the predecessor Missouri Pacific-B.R.C. Agreement.)

2. In July 1931, Ticket Agent Beck resigned and was replaced by the senior Ticket Clerk, Z. A. Fisher, whose job was simultaneously abolished. Fisher continued to perform the same functions he had before (selling tickets and related work), which Beck before him had also performed. He assumed additional supervisory responsibilities as well. From July 1931 to April 1935 Fisher worked alone on the first shift.

3. In September 1931, the Agreement was cancelled. Two years later, in September 1933, this Carrier executed its first agreement with the B.R.C.

4. In April 1935, Ticket Agent Fisher was replaced by R. W. Campbell, but the same schedule was maintained; i.e. the Ticket Agent worked alone on the first shift, two Ticket Clerks worked on other shifts.

5. Between 1941 and 1943 four ticket sellers were hired to take care of additional passenger business. Ticket Agent Campbell continued to work and supervise.

6. In April 1945 Ticket Agent Campbell retired and was replaced by M. C. Shellman (who was still in this position in 1958 when the instant claim arose).

7. Following World War II passenger business began to decline and, starting in 1945, Management gradually decreased the ticket force. Several Organization complaints ensued, including claims submitted in 1945, 1946, 1947 and 1951. Generally, the Organization complained about Ticket Agent Shellman doing Ticket Clerk's work. For example:

"... Ticket Agent ... Shellman is performing the work of Ticket Clerk from 1 P. M. to 3 P. M., selling tickets" ... (December 3, 1945)

A claim on behalf of Copeland (also the claimant here) for the difference in pay between Baggage Clerk and Ticket Clerk "on account of Ticket Agent selling tickets and making reports". (April 7, 1946)

A claim for several employes affected by a force reduction which, allegedly, "was made possible by the Ticket Agent taking over work that comes under our agreement and belongs to the ticket clerks". (February 13, 1947)

All these claims were denied by Carrier's highest designated officer on the grounds that the Ticket Agent's responsibilities included selling tickets

and related work and that the Texarkana Agents had always done such work. None were appealed, nor did the Organization seek to revise the Agreement in order to dispose of the problem.

On the basis of the above evidence it seems apparent that Ticket Agents have customarily performed the type of work which Petitioner now claims is exclusively reserved to Clerks. This was true under the predecessor agreement under which the parties operated for a time; it was true in the interim period when no agreement was in force; and it remained true (to varying degrees) in the period since the first Carrier — B.R.C. Agreement was negotiated. During the entire 1931-1958 period, then, there was always a Ticket Agent who sold tickets and did related work, and whose supervisory responsibilities varied in amount in accordance with the increases and decreases in the Ticket Clerk group. Under the circumstances we cannot hold that the work in question belonged exclusively to the Clerks. (Cf. Awards 11126, 11082, 11149 and others.) The claim, therefore, cannot be sustained.

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 31st day of October 1963.