

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolfe, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4826) that:

1. Carrier violated the Clerks' Agreement at Montevideo, Minnesota, when it assigned the work of calling crews to employees of another class and craft during the period of time when employees covered by the Clerks' Agreement were not on duty.

2. Carrier shall compensate Employee J. B. McKeown for a two-hour call as provided in Rule 34 for Monday, November 9th; Sunday, November 15th; Saturday, November 28th; Sunday, December 6th; Tuesday, December 8, 1959, and all subsequent days on which employees not covered by the Clerks' Agreement call crews.

EMPLOYEES' STATEMENT OF FACTS: For many years yard clerks at Montevideo, Minnesota, were assigned around the clock, seven days per week, with relief. These yard clerks throughout the years called all the crews. As these yard clerk positions were gradually abolished during the last few years, some calling of crews was done by employees other than clerks.

Included in the principal duties assigned to the yard clerk positions was the calling of crews, and the occupants of these positions exclusively performed that work during their regular hours of assignment.

Employee J. B. McKeown is regularly assigned to Ticket and Yard Clerk Position No. 42 from 10 A. M. to 6 P. M. Friday through Tuesday with Wednesday and Thursday rest days. The duties of Position No. 42 as assigned by bulletin are: "Sell tickets, perform yard clerk's work, prepare reports, call crews, handle mail and baggage to and from trains."

On September 24, 1959, Carrier abolished the second trick operator position. Since there was no one on duty to call crews between 4 P. M. and 10 P. M., following this abolishment, Carrier in lieu of calling a clerk to call the crews, called the third trick operator on an overtime basis to perform that work. This work involved mostly calling a crew for Train No. 264, which is necessary shortly after 6 P. M.

continued participation of employes within the scope of the 'Telegraphers' Agreement in the performance of crew calling work.

Furthermore, it is well recognized by awards of this division that the scope rule of the Clerks' Agreement cannot be interpreted so as to create a monopoly placing all clerical work in the hands of the clerks. In connection with this dispute attention is directed to the following Award of this Division involving a similar claim wherein the Board, in denying the claim, stated:

"The Organization relies chiefly on the fact that crew callers are expressly mentioned in group 2 of Rule 1 as one of the classes of employes embraced in the Scope Rule of the Agreement. It is admitted that this classification has appeared in the Scope Rule of the Clerks' Agreement continuously since 1920. Rule 2, which defines or gives the qualifications of certain classes of clerical employes, does not attempt to define crew callers or set up rules as to qualifying employes as such.

The situation at Horace has existed for many years, and this Docket appears to be the first claim presented by the Organization that the work at this station belongs under the Agreement. The failure of the Organization for more than twenty years to make any claim to the work at Horace would seem to indicate rather conclusively that it was not the intention of the parties that the work of calling crews at such a station be considered as coming under the Agreement.

When the Agreement fails to define crew callers, we must resort to the common definition or understanding of the term. We would not ordinarily speak of a person as a crew caller if he only spent a small portion of his time at that work and the major portion of his time at some other work. The fact that the Employes made no claim to this work for so long would indicate that they have interpreted the Agreement as not applying to positions when the major portion of the work of the position did not consist of calling crews."

It is the Carrier's position that it has not violated the rules of the Clerks' Rules Agreement when it continued to permit telegraphers as well as other employes outside the scope of the Clerks' Rules Agreement to perform the work of calling crews at Montevideo in accordance with the practice that has been in effect at that point over the past 57 years, and we respectfully request that the claim be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to the Clerks' Agreement of 1920, Telegraphers were used to call crews at Montevideo, Minnesota. Thereafter, Telegraphers and other employes outside the scope of the Clerks' Agreement continued to participate in crew-calling. More recently, when yard clerks were employed around the clock, seven days per week, yard clerks were used to call all crews. As yard clerk positions were gradually abolished, some calling of crews was done by employes other than clerks.

Claimant's duties, as assigned by bulletin, included that of calling crews. He was employed on a trick from 10 P. M. to 6 A. M. There were no clerk positions at other hours during the day, because they had been previously abolished. The few crews needed during hours when no clerk was on duty were called by Telegraphers.

On September 24, 1959, Carrier abolished the second trick Telegrapher position, leaving no one to call crews between 4 P.M. and 10 P.M. This claim is based upon the fact that Carrier used the third trick operator to call crews during these hours on an overtime basis instead of using the Claimant.

Carrier objects to the consideration by this Board of that portion of the claim dealing with "all subsequent days" on the ground that same was not presented to the Carrier in the "usual manner" as required by the Railway Labor Act, as amended, Section 3, First (i) and Article V of the Clerks' Agreement. Carrier's objection is well founded. Award 11182. The Organization acted upon the assumption that the alleged violation herein was a continuing one. This is not the case, as the claim clearly indicates that compensation was asked for specific, isolated days.

Although not its principal reliance, Petitioner argues that the Scope Rule supports its claim, in that the inclusion of crew-calling within the rule gave clerks an exclusive right to the work. In support of this argument, the Organization relies on Award 4812 (Shake). This Award, which held that the position of Crew Caller involved such a limited type of special work that the description of the position implied that the work was also classified, is not pertinent here. Any assumption that the parties intended the listing of a position to include the work was resolved when the Carrier rejected the Organization proposal that "work" as well as "positions" be included in (e) of the Scope Rule. We previously held, on this very property, in Award 9821, that "When the practice has been to permit the calling of crews by employees not covered by this Organization's Agreements, the Board should not disturb such established practice."

Petitioner's principal reliance is on Rule 32, paragraphs (f) and (g), which read:

"(f) In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35 (b), (if such holiday falls within the employee's work week) the employee regularly assigned to position on which overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32 (f) means that the employee who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime.

(g) When additional help is required for overtime work, or when the duties to be performed on overtime cannot be identified with a specific position, employees will be assigned to such overtime in accordance with seniority, fitness and ability, first from the subdivision of the department wherein the work occurs and, secondly, from the entire department."

Under this Rule, the question becomes who was the employee regularly assigned to the position on which overtime was required? In deciding this question, the problem of exclusivity is not relevant. Under Rule 32, the incumbent must prove only that he is the incumbent and that overtime was required, not that he is exclusively entitled to the work. The fact that prior to the abolition of his position, the second trick operator performed this duty does not give the third trick operator a superior right to overtime work in the second trick. The third trick operator is also subject to the requirements of Rule 32 and is entitled to preference for overtime work only if he can prove he is "the employee regularly assigned to the position on which overtime is required."

The record indicates that the third trick operator, as well as Claimant, was used for calling crews. This assertion, made by the Carrier, was not denied by the Organization. Since both the third trick operator and Claimant participated in the crew calling work, it was not work which could be identified with either position. The fact that crew calling was assigned to the Claimant in the bulletin does not give his position exclusive rights to crew-calling. Awards 7031, 12046. It follows that Claimant has failed to sustain its burden of proof under Rule 32 (f) that he was the employe regularly assigned to the position on which overtime was required.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.