

Award No. 12922

Docket No. CL-12331

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

**THE PITTSBURGH & WEST VIRGINIA
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4874) that:

1. The Carrier violated Rules 1, 3, 20, 22, 26 and 53, among others, of the current Clerks' Agreement on June 1, 1960, when it arbitrarily and unilaterally abolished the position of Cashier-Typist located at Pittsburgh, West End, Pennsylvania, and assigned the work thereof to employees outside of the Agreement.

2. The position of Cashier-Typist at Pittsburgh, West End, Pennsylvania, shall be restored, bulletined and awarded as prescribed in the rules of the current Agreement.

3. Mr. J. W. Bird shall be compensated the difference between one day's pay at pro rata rate, plus all arbitraries and allowances heretofore allowed, including Saturday, Sunday and Holiday work at time and one-half, and his actual earnings from June 1, 1960, until such time as the violation of Agreement is corrected.

4. Mr. Sally shall be compensated the difference between Mr. Bird's actual earnings and his own from June 1, 1960, until such time as the violation of Agreement is corrected.

5. Mr. Stasko shall be compensated the difference between the actual earnings of Mr. Sally and his own from June 1, 1960, until such time as the violation of Agreement is corrected.

6. Mr. Lininger shall be compensated the difference between the actual earning of Mr. Stasko and his own from June 1, 1960, until such time as the violation of Agreement is corrected.

7. Mr. Kessler shall be compensated the difference between the actual earnings of Mr. Lininger and his own from June 1, 1960 until such time as the violation of Agreement is corrected.

8. Mr. Karmen shall be compensated the difference between the actual earnings of Mr. Kessler and his own from June 1, 1960, until such time as the violation of Agreement is corrected.

9. Mr. Yost shall be compensated the difference between the actual earnings of Mr. Karmen and his own from June 1, 1960, until such time as the violation of Agreement is corrected.

EMPLOYEES' STATEMENT OF FACTS: Effective March 1, 1944, the Current Agreement, between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and The Pittsburgh and West Virginia Railway Company, was signed by the officers of both parties to the Agreement.

There existed at that time a clerical position designated as Cashier-Typist, located at Pittsburgh, West End, Pennsylvania. This position located approximately one (1) mile from the Pittsburgh, Pennsylvania, Agency had duties performed by a clerical employee (see Exhibit I) under the jurisdiction of the agent at Pittsburgh. The agent at Pittsburgh was EXCEPTED from The Order of Railroad Telegraphers' Agreement. The Pittsburgh Agency was destroyed by fire in 1946 and subsequently was abandoned. The jurisdiction of the Cashier-Typist at West End was then moved to the Rook, Pennsylvania, Agency, located approximately three (3) miles from the West End Station. The duties of the Cashier-Typist remained at West End and were performed by a clerical employee as they had been performed prior to, and also subsequent to, the signing of the Clerks' Agreement.

On January 14, 1948, Mr. W. E. Robinholt, Superintendent of Transportation, at the request of Mr. L. G. Walker, Vice President, addressed a letter to Mr. Alex Dempsey, then General Chairman of the Clerks' Committee, enclosing a list of employees and positions coming within the Scope of the Clerks' Agreement. Nineteenth (19th) on that list was W. J. Hanselman, Cashier (see Employees' Exhibits A(1) and A(2)).

An exchange of correspondence in June, 1958, set up a meeting between Mr. W. C. Kresge, General Superintendent, and Mr. J. S. Aitken, then General Chairman of the Clerks' Committee. At this meeting preliminary discussions were held concerning the Cashier-Typist position and they resulted in a disagreement between Mr. Kresge and Mr. Aitken as to the propriety of this matter being handled by Mr. Kresge. (See Employees' Exhibits B and C). Mr. Aitken then requested this matter be placed in the office of Mr. Manoogian, Manager of Labor Relations. (See Employees' Exhibit D.) Mr. Kresge agreed to this procedure. (See Employees' Exhibit E.) No further correspondence or discussion was arranged at this time.

A notice was posted January 20, 1960, at the West End Station, notifying the public that on December 26, 1959, application was filed with the Pennsylvania Public Utility Commission for approval to change the status of the West End Agency from an agency to a non-agency station.

On February 17, 1960, the position of Cashier-Typist was advertised under the provisions of the Clerks' Agreement (see Employees' Exhibit F). In accordance with the provisions of the Clerks' Agreement, Mr. J. W. Bird was assigned to this position February 24, 1960.

On March 8th, 9th, 10th, 11th and 14th, 1960, Agent Operators, employees outside of the Clerks' Agreement, were sent to work at the West End Sta-

meeting here when it abolished an unnecessary position in close proximity to the Rook Agency and filled out the day of the Rook Agency employes. This, as argued, was entirely proper, since the Organization cannot show the work involved was exclusively its to perform. The Scope Rule described the employes protected by the contract—it spoke neither of position or of work. However, if this Board would assume that the Scope Rule was in effect describing or enumerating positions which were to become the property of the Organization, the Carrier respectfully urges that the only “work” which would attach to the positions enumerated would be that type of work which historically and traditionally was purely clerical in nature, which is not the case in this instance. The work involved was historically and traditionally agency work, as illustrated by the advertisement, and to give to the Organization exclusive rights thereto would seriously disrupt relationships with members of the Telegrapher craft currently employed on this property. For this latter reason, it is respectfully urged that if a decision adverse to the interest of the Carrier is to be rendered in this proceeding, due and appropriate notice should be provided the Order of Railroad Telegraphers, granting to that Organization an opportunity to be heard if it so desires.

The Carrier respectfully prays that the claim should be dismissed for the reasons stated herein.

(Exhibits not reproduced.)

OPINION OF BOARD: In converting its Pittsburgh West End Station from an agency to a non-agency station, Carrier abolished the Cashier-Typist position on June 1, 1960. The work remaining was transferred to the Agent-Operator at Rook, Pennsylvania, where it was performed by employes outside of the Clerks' Agreement. Mr. J. W. Bird, who occupied the Cashier-Typist position before it was abolished, exercised his seniority for the position of Material Foreman. The displaced foreman, in turn, exercised his seniority, which action resulted in a chain of other displacements.

Mr. Bird makes claim that Carrier violated the Clerks' Agreement by arbitrarily and unilaterally abolishing the position of Cashier-Typist. He and the other employes involved in the series of displacements request compensation as specified in the claims.

Organization maintains that the work of the position of Cashier-Typist belongs exclusively to employes covered by the Clerks' Agreement. It argues that the action of Carrier in changing the status of the West End Station from agency to non-agency did not change the duties of the Cashier-Typist. To sustain its position it relies upon the Scope and Rules 20, 22, 26 and 53. It also contends that Clerks had performed the work of the Cashier-Typist position at the West End Station to the exclusion of other crafts both prior to and subsequent to the Clerks' Agreement in effect since March 1, 1944, a period of sixteen years.

Central to this dispute is the question of whether Organization has proved that the work of the position of Cashier-Typist belongs exclusively to employes under the Clerks' Agreement or whether it demonstrated the existence of the practice of Clerks exclusively performing this work at the West End Station.

The Scope Rule of the current Clerks' Agreement is of the general type which merely lists the class of employes covered; it does not define the work reserved to the employes. Since we find no basis for exclusive right

to this work under the Scope, we then must determine if Organization has a claim to it through custom, practice and tradition. Both parties grant that Cashier-Typist work duties were performed by Telegraphers, either Agents or Operators, at locations other than West End. They disagree, however, as to the practice at West End Station. Carrier takes issue with the Brotherhood's assertion that historically none of the duties performed by the Cashier-Typist was ever assigned to employees of another craft. It points out that although the Cashier-Typist has been traditionally a member of the Clerks' Organization, the position has always been under the jurisdiction of an Agent, not a member of the Clerks' Agreement. This work, it maintains, is agency work, performed interchangeably by Telegraphers or Clerks. The record does not clearly sustain the position that the Cashier-Typist exclusively performed this work at West End. Without an exclusive reservation of Cashier-Typist work under the Scope Rule, and without sufficient proof establishing a practice of performance of this type of work exclusively by Cashier-Typists at West End, we find that the transfer of these duties to the Agents and Operators at Rook, Pennsylvania, with proper notice to the parties concerned was within the prerogative of Carrier. We, therefore, hold that the claims are without merit and are 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 28th day of September, 1964.

LABOR MEMBER'S DISSENT TO AWARD 12922, DOCKET CL-12331

The Referee states that:

"Central to this dispute is the question of whether Organization has proved that the work of the position of Cashier-Typist belongs exclusively to employees under the Clerks' Agreement or whether it demonstrated the existence of the practice of Clerks exclusively performing this work at the West End Station." (Emphasis ours.)

The former proposition was admittedly deficient, and it was to the latter proposition, i.e., that emphasized above, that the Organization addressed itself. Quite specific, and proven even by Carrier's admissions in the record, was the fact that Clerks had, before and ever since the inception of the Clerks' Agreement up to the time the work was moved some three (3) miles to Rook, there to be assigned to the Agent and Telegraphers, exclusively performed the work at West End.

In fact, the Carrier stated that "on the property all the work of this type performed at locations other than West End is performed by telegraphers (Agents or Operators)." (Emphasis ours.)

Carrier never showed, or attempted to show, that other than Clerks had performed the work at West End, but merely alluded to and addressed itself to general propositions. Why the Referee chose to reverse his own sound logic, as expressed in Award 11835, or giving recognition to the practice in the particular location or station rather than to the practice in general, rises serious doubts as to whether or not he fully understood the importance of the issue.

Carrier implied that the work involved was identical to that performed by the Agent and Operators at Rook but against the implication were facts of record clearly and conclusively showing that those people who are now performing the work had to be sent to West End, while the Clerk was on duty and performing his work, to learn the work that was shortly thereafter improperly turned over to them.

A close look at the record and the Award indicates that this Referee has introduced a new yardstick or "test" even more repugnant than the "exclusivity test" discussed in the dissent to Award 11963. Here, the Referee seems to hold that because the Cashier-Typist position was "under the jurisdiction of an Agent" Carrier was within its rights to do what it did.

To anyone having the slightest inkling of railroad operations, such logic is totally absurd. The writer knows of no "Clerk" working without any supervision, however remote. It is patently wrong to hold that merely because of the fact that the Cashier-Typist worked under a supervisory agent located some distance from the situs of the work, that the Carrier could, without more, therefore do away with the Clerk position, though the duties remained, and assign those self-same duties over to an Agent and Telegraphers at still another location.

For the above and other reasons evident in the record, I most vigorously dissent.

D. E. Watkins
Labor Member