

Award No. 12959
Docket No. CL-12249

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4845) that:

(a) Carrier violated and continues to violate the Rules of the Clerks' Agreement at Lordsburg, New Mexico, when effective with the close of shift July 10, 1959, it abolished Position No. 13, Cashier, and concurrent therewith assigned the duties thereof to the Agent and First Telegrapher, employees not covered by the Agreement; and,

(b) That the involved clerical work be restored to the Scope and Operation of the Clerks' Agreement; and,

(c) That C. R. Simpkins and/or his successors, if any, be compensated for all monetary loss sustained at the Cashier's rate of pay for July 11, 1959 and for each and every day and date thereafter until the Agreement violation is corrected.

EMPLOYEES' STATEMENT OF FACTS:

1. There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which Agreement (hereinafter referred to as the Agreement) is on file with this Board and by reference thereto is hereby made a part of this dispute.

2. On April 12, 1958, and prior thereto, the freight station force at Lordsburg, New Mexico, consisted of the following positions:

Company No. and Title	Assigned Hours
1. Agent	8:00 A.M. to 5:00 P.M.
2. 1st Telegrapher	8:00 A.M. to 4:00 P.M. (relieved on rest days)

be given precedence or priority over some other work. The difference between the situation in the Illinois Central Award and existing practices and interpretations on Southern Pacific is clearly illustrated by the force at Bisbee, the station involved in Award 615, where at the time of the rendition of that Award, as well as for a number of years prior and subsequent thereto, both an Agent and first telegrapher-clerk worked the day shift. This is also true at many other locations on Carrier's lines.

In fact, at the time of the latest reprint of the Telegraphers' Agreement, there were no less than 79 positions of "Agent" at stations where telegraph duties were performed by "telegrapher-clerks", and while a number of force adjustments have been made in respect to reclassifying agents to agent-telegraphers, determination by appropriate supervisors as to whether this would be done or whether clerical positions would be eliminated is and always has been a function not limited by the Clerks' Agreement since both Agents and telegrapher-clerks have historically performed clerical work as a part of their assignment.

The handling given by Carrier in this case could in nowise be considered frivolous. Action was required and Carrier asserts that it was not limited by any provision of the current agreement when in the interest of economy and efficiency in its operation it abolished Cashier's Position No. 13 at Lordsburg and rearranged the work at that station in the manner described.

CONCLUSION

The claim in this docket is entirely lacking in either merit or agreement support and Carrier requests that, if not dismissed, it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner claims that Carrier violated the Agreement when it abolished a Cashier position coming under said Agreement, in the freight station force at Lordsburg, New Mexico, and assigned the duties thereof to Agent and First Telegrapher, employees not covered by the Agreement.

Carrier does not deny that it effectuated this reduction in staff and re-assigned the duties to the two incumbents as described by Petitioner, but contends that no violation was entailed.

The governing Agreement contains a so-called general type Scope Rule, listing the positions which are the subject of the Agreement, but does not explicitly guarantee the retention of said work. The awards of this Board have consistently held that under such Scope Rule, for the Claimant to prevail, it is necessary to establish that the work alleged to have been improperly transferred must have been exclusively held by Claimants through a history of customary practice.

The parties do not disagree that practice as well as the Telegraphers' Agreement and our awards sanction the Carrier's right to assign clerical-type duties to employees designated as telegraphers or agents to "fill out" their telegraphic assignments. Carrier points out that as of the most recent reprint of the Telegraphers' Agreement (prior to November, 1960) there were 79 positions of "Agent" at its stations where clerical duties were performed by "telegrapher-clerks" and adds,—"both Agents and telegrapher-clerks have historically performed clerical work as a part of their assignment."

On the other hand, Petitioner states, duties now transferred to the Agent and 1st Telegrapher "had been historically and traditionally assigned to and performed by the Cashier for at least thirty-four (34) years." Carrier states that its records show that Cashier's position was established at this location in July, 1922, abolished December, 1932, and re-established in May, 1942, and that the work thereof was performed in the ten-year interim by Agent and General Clerk.

We have often said, and we reiterate here, that we may not and will not interfere with management's rightful discretion to decide on the most efficient and economical way of utilizing its staff, including the reduction thereof, if in doing so it does not deny Agreement rights to which it has committed itself.

Under the facts of the instant claim, our determination centrally depends on whether in exercising its inherent right to consolidate functions into the hands of fewer employees, management was obligated by the Agreement to choose the Cashier, instead of either the Agent or the 1st Telegrapher as one of the survivors of the group of three here involved, if it was determined to reduce the total number of these employees.

Put in terms of our criterion of usual and customary exclusivity of practices and limiting ourselves, — as we must — to the Agreement which is before us (that of the Clerks') and the position which is the subject of the claim (the Cashier's), a conclusively impressive case persists for protection of the Cashier's position for the performance of work which he had done for at least seventeen years as a full eight-hours' job and which was more characteristically a Clerk's job than a Telegrapher's or Agent's, and none of whose functions had significantly diminished or changed at the moment when they were parceled out to two other positions not under this Agreement coverage.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 this dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October, 1964.

DISSENT TO AWARD 12959, DOCKET CL-12249

Award 12959 repeats the same basic error committed in Award 12822 between these same parties in that it denies the Carrier's right, as established by this Board, to assign clerical work to other than clerical employees. The dissent filed there is here adopted by reference.

For these reasons, we dissent.

D. S. Dugan
R. E. Black
P. C. Carter
T. F. Strunck
G. C. White