

Award No. 13038
Docket No. CL-12856

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4983) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, at Klamath Falls, Oregon, when on January 23, 1960, it required and/or permitted conductors, who are not covered thereby, to perform work reserved to ticket clerks under the terms thereof; and

(b) Carrier shall now be required to allow Mr. A. H. Sullivan, Chief Ticket Clerk, Klamath Falls, eight hours' compensation at the time and one-half rate of his position on January 23, 1960, account not called and used to perform duties required of his position in accordance with applicable Agreement provisions.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) 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 (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. Carrier maintains a passenger station at Klamath Falls, Oregon, on its main line on the Shasta Division. The station force at the time this dispute arose consisted of the following employees:

Employee	Position	Assigned Hours	Rest Days	Rates of Pay
*W. S. McBride	Agent	8 AM- 5 PM	Sat. & Sun.	
A. H. Sullivan	No. 5 Chief Tkt. Clk.	9 AM- 5 PM	Sat. & Sun.	\$20.56
R. H. Gulbrecht	No. 78 Frt. & Tkt. Clk.	7 AM- 4 PM	Thurs. & Fri.	19.33

right to perform work is not the equivalent of work performed. That principle is well established by a long line of Awards of this Division, and since Petitioner has relied upon Awards 6019 and 6562 involving the parties to this dispute in support of its position in this case, we quote the following from those Awards in connection with penalty payment at the overtime rate of pay:

AWARD 6019

"Having failed to comply therewith the Carrier must pay the penalty which, under our decisions (see Awards 5271 and 5558), is the straight time or pro rata rate of Claimant's position."

AWARD 6562

"Accordingly, the claim must be sustained, but at the pro rata rate. Although the Referee is of the opinion that in this case time and one-half would be justified because Claimant was denied opportunity to earn the Sunday rate, in view of Award 6019 on the same property, he feels bound to follow that Award which allowed only the straight time rate."

Also see Third Division Awards 6750, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748 and 9749.

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore asks that if not dismissed, it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute.

Klamath Falls, Oregon, is a station located on Carrier's main line between Oakland, California, and Portland, Oregon. The Carrier maintains a ticket office at this station which is open between the hours of 9:00 A. M. and 6:00 P. M., seven days a week.

Carrier's passenger train CASCADE, which operates between Oakland and Portland, was scheduled to arrive at Klamath Falls as Train No. 11, en route Oakland, at 11:40 P. M., Saturday, January 23, 1960, and as Train No. 12, enroute Portland, at 1:25 A. M., Sunday, January 24, 1960.

Prior to the arrival of Train No. 11, January 23rd, a Pacific Coast airliner, en route South was, because of inclement weather, forced to land at Klamath Falls and approximately 20 of its passengers were brought to the Carrier's station in order to continue their trip by rail.

As the station was closed between the hours of 6:00 P. M. and 9:00 A. M., the Trainmaster arranged with the Yard Clerk on duty to open it so the passengers might take shelter from the weather.

The conductors, who were respectively called for service on Train Nos. 11 and 12, sold the necessary tickets from their own ticket stock, to the passen-

gers, who were awaiting the arrival of these trains. The tickets sold were not from the supply furnished the ticket office, but were from the conductors' own ticket supplies.

The claim is bottomed on the premise that the work of selling tickets in the station is reserved exclusively to clerical employes covered by the Scope Rule of the Agreement, that, therefore, the sales made by the Conductors under the facts of this case constituted a violation of Agreement rules.

The Employes admit to the right of Conductors to sell tickets and perform the necessary clerical work incident thereto while on trains, but object to their doing so while within a station where, as in this case, covered clerical employes may be made available to handle such sales.

The difficulty with the Employes' theory of the case is they cannot establish an exclusive right to perform the work of handling ticket sales on this property, in particular, and, for that matter, throughout this industry generally. Others, including members of the telegrapher craft and Conductors, have customarily performed such work. There is uncontroverted evidence in this record that this Carrier's Conductors traditionally have sold tickets not only on trains but prior to departure at station plaforms (See Decision No. 3606 of SBA No. 18 — Train and Yard Service Panel).

While the Board understands the concern of the Employes over possible intrusions by other crafts into what may be considered the exclusive jurisdiction of covered clerical employes, nevertheless, under the circumstances of this particular case, and in view of the prevailing practices on this property, we can find no rule support for the claim. Accordingly, it must be denied.

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 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 30th day of October, 1964.