

Award No. 13048
Docket No. CL-12650

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, (GL-4995) that:

(a) The Carrier violated the current Clerks' Agreement when on July 5, 6, 7 and 8, 1960, the Assistant Agent at Lake Charles, Louisiana, consumed two to three hours each day in the preparation of monthly Form L-1594 "Junction Agent's Report of Cars Handled for Industries on Our Track" for the month of June 1960.

(b) N. J. Falcon who was qualified, available and willing to work be paid two hours at the time and one-half time rate of his regularly assigned position of Revising Clerk on each of the dates of July 5, 6, 7 and 8, 1960, as a result of this violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: For many years the Freight Station at Lake Charles, Louisiana, was manned by a supervisory agent, a position not covered by any rules agreement, a chief clerk and a number of clerks, a messenger, porters and truckers, all covered by the scope of the Clerks' Agreement. The clerks have always performed all of the clerical work at the station.

On May 31, 1960, the following positions were assigned at the Lake Charles Freight Station:

Position Number	Title	Rate of Pay
	Agent	
2	Chief Clerk	\$504.68 per month
3	Cashier	20.74 per day
35	Assistant Cashier	18.66 per day

The entire report consisted of fifteen pages and we have reproduced pages 1, 10, and 15 in order to furnish a fair example of what the report consists of. It is a mere listing of industries and a count of cars handled in and out. The report is reproduced as Carrier's Exhibit No. 4. The report is the actual report that was made in the office at Lake Charles. You will notice that each page has a correction on the number of cars. This is because the typed record is the record of cars handled in June 1960, and the corrections are the count of cars handled the following month. This is the way most of the reports are made. The stations are listed one time and the clerk or agent counts the cars out of the demurrage book and inserts them on the report. The corrected report makes the report for the following month. It is not a very big job but it requires a list of the industries and a count of the cars. It is usually worked by someone who works on the demurrage book and before preparing the final report, which is the summary sheet. You will notice page 10 of this report mainly deals with industries at West Lake. These reports were made by the agent himself before the station was dualized at Lake Charles.

The preparation of the total report would take about two days, as a rule. It varies from station to station, with the size of the station determining the time, however, the work is done on practically the same basis elsewhere on the railroad.

The Carrier respectfully requests that the claim be denied as there is absolutely no basis whatsoever in the agreement to support it. True, this case has not been presented to the Board on previous occasions because the same situation has apparently not occurred on any other carrier. In this case a railroad committee made a change in the work methods and saw an opportunity to make better use of the station and equipment at Lake Charles. The matter was then handled by the ORT as a grievance which ultimately resulted in settlement by the Carrier in dualizing Lake Charles and West Lake. The telegraphers have all the work that they had before and the clerks have all the work they had before and a little more because the agent has to travel back and forth between West Lake and Lake Charles. True, there are no clerks in West Lake regularly but there are some clerks who start work in Lake Charles and then work part of the day in West Lake in car checking and other minor items and then return to Lake Charles to go off duty. No one has suffered loss of any kind and the Carrier respectfully requests that the Board deny this claim.

CONCLUSION

We have devoted a considerable amount of time in explaining the entire situation at Lake Charles as we realize it presents a new question but we are confident that the Honorable Board will deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. The Carrier operated a freight station at West Lake, Louisiana, which was manned by an Agent and a station at Lake Charles, Louisiana, which was manned by an Agent and some 20 clerks. Although on occasion clerks were used at West Lake, the Agent was usually the only employee and did what clerical work was necessary to fill out his job. When business fell off at West Lake, Carrier petitioned the Public Service Commission of the State of Louisiana and received its approval to dualize the West Lake and Lake Charles stations. The Agent at West Lake was transferred to Lake Charles where he was given the title of Assistant Agent. He continued to do the work he had formerly

done at West Lake including such work as might on occasion be necessary at the premises of the former station. Among the various reports compiled by the Assistant Agent was a "Junction Agent's Report of Cars Handled for Industries on Our Tracks." On the days in dispute he spent two or three hours preparing the said form.

It is the position of the Employees that this work belonged to the Clerks by virtue of the Scope and the Seniority Rules. The Scope Rule is general in nature and is of the type under which this Board has frequently held that the Employees are obliged to show an exclusive right by custom and tradition on the property. The Employees tried to do so by showing that this work was traditionally performed by employees at the Lake Charles station. We think, however, that the history and tradition of West Lake is equally applicable since the two stations were dualized and the work at West Lake was transferred to Lake Charles. This work was not exclusively performed at West Lake by employees of the Organization. It was, in fact, performed by the very person who is now the Assistant Agent at Lake Charles, and who formerly was the Agent at West Lake. Where the Agreement is system-wide, as it is here, we have held that system-wide practice is controlling. Award 11526 and others.

The Organization objected to the fact that the Carrier abolished the West Lake Agency and transferred its work to Lake Charles, and in so doing created the job of Assistant Agent. The Organization argued that it would be possible for the Carrier to abolish other one-man agencies, transferring the work to Lake Charles and thereby effectively removing clerical jobs which belonged to the Employees. In this connection it should be pointed out that in establishing a new position of the Assistant Agent at Lake Charles Carrier is clearly acting within its prerogatives and has not violated the Agreement. As we stated in Award 12419 (Coburn):

"At this late stage in the development of Railroad 'Case Law' there should be no question that Carrier is free to determine the way in which the work and operations are to be performed and conducted in the interest of economy and efficiency except insofar as that freedom may be limited by law or agreements with the representatives of its employees."

What, in effect, the Organization has been demanding is that the clerical work which was performed by an Agent at West Lake may no more be performed by an Agent when transferred to Lake Charles. In this connection they rely on Award 5803 (Carter). We do not think, however, that Award is relevant. In that case it was the Telegraphers who objected to the Clerks being assigned to work which they had formerly done. That Award held that the Telegraphers were not entitled to it by exclusivity but neither were the Clerks. Award 5803 is more aptly precedent for our finding in this case that the work was not exclusively either the Clerks' or the Telegraphers'.

The Organization argued that after the establishment of the position of Assistant Agent two clerical positions were almost immediately abolished. It raised the question as to why an Assistant Agent was necessary when business was evidently decreasing.

We think that it is within Management's prerogatives to do so provided there is no violation of the Agreement and the Employees have failed to demonstrate that there is such violation. We think, however, that the Carrier was not acting in bad faith. Although the agency at West Lake was abolished,

a good portion of the work remained and it was necessary to have an Agent who could, from time to time, conduct business on the premises of the former agency. The former Agent was used for this purpose and the clerical work that he did at Lake Charles was related to the clerical work which he formerly performed at West Lake.

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 Employee involved in this dispute are respectively Carrier and Employee 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 13th day of November 1964.