

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-4966) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, when it failed and refused to bulletin Ticket Clerk Position No. 206 to employes covered thereby, but, instead, assigned the duties thereof to Mr. R. E. McGee, City Ticket Agent, who has no seniority rights thereunder; and

(b) Carrier shall now allow Mrs. Dorothy E. Mills, her substitutes and/or successors, if any, eight hours' additional compensation at the rate of Position No. 206 each date from January 4, 1960 to and including March 17, 1961, that employe McGee and/or any other employe not covered by the Agreement was required and/or permitted to perform the duties thereof.

EMPLOYEES' 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 employes 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. At the time this dispute arose, Carrier maintained a facility called Oakland City Ticket Office, with the following personnel:

Position	Incumbent	Assigned Hours	Rest Days	Rate
City Ticket Agent	R. E. McGee	*9 A. M.-5:30 P. M.	Sat&Sun	
No. 202 Cashier	E. Pingree	9 A. M.-5:45 P. M.	Sat&Sun	\$21.12
No. 205 Hd. Tkt. Clk.	F. Grimmelman	9 A. M.-5:30 P. M.	Sat&Sun	20.88
No. 206 Ticket Clk.	H. O. Warren	9 A. M.-5:30 P. M.	Sat&Sun	20.32
No. 211 Ticket Clk.	W. H. Stussie	9 A. M.-5:30 P. M.	Sat&Sun	20.32

"FORMER POSITION VACANT"**Rule 35.**

When an employe makes application for and is awarded a position, his former position will be considered vacant and advertised."

With regard to Rule 1, as clearly stated in Section (a) thereof, "These rules shall govern the hours of service and working conditions" of positions and class of positions there identified. It does not describe work embraced by the agreement. Further, neither that rule nor any other rule of the current agreement relates to or even by inference reserves to listed positions work forming basis of this claim.

With regard to Rules 33 and 35, Section (a) of Rule 33 provides only that new positions or vacancies shall be advertised semi-monthly. Neither Rule 33, Section (a), Rule 35, nor any other provision of the current agreement contemplates that a position that has become non-existent through abolishment shall be advertised as a vacant position.

As pointed out by the Carrier, the claim is completely lacking in merit because no provision of the current agreement supports the claim, this being illustrated by the total lack of an agreement provision supporting the claim as evidenced by long-standing practice on the property.

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and asks that if not dismissed, it be denied.

OPINION OF BOARD: Prior to December 31, 1959, the office force at Carrier's Oakland, California, ticket office consisted of the following:

Position No.	Title	Incumbent
200	Agent	R. E. McGee
202	Cashier	E. C. Pingree
205	Head Ticket Clerk	F. A. Grimmelman
206	Ticket Clerk	H. O. Warren
211	Ticket Clerk	W. H. Stussie

All of the above positions were covered by the current Agreement with the exception of Position No. 200, Agent, which was not covered by any agreement.

On December 31, 1959, F. A. Grimmelman retired, and the resultant vacancy on his Position No. 205, Head Ticket Clerk, was filled temporarily under Rule 34(c) by H. O. Warren, incumbent of Position No. 206, Ticket Clerk, pending assignment of a regular incumbent to Position No. 205, through advertisement notice. This position was advertised December 24, 1959, and was assigned to the senior applicant, H. O. Warren, under date of January 8, 1960. The resultant vacancy on Position No. 206 was not filled and the position was abolished due to a decline in business.

The Employees allege a violation of the Clerks' Agreement because the work of the abolished position, it is charged, was assigned to and performed by the Agent, an employe not covered by that Agreement.

The Carrier's defense is that the Clerks do not enjoy an exclusive right to perform the work because they cannot show it had been performed by

them to the exclusion of all others under the prevailing practice and custom on this property. Therefore, the Carrier argues, the work here in dispute not having been reserved to the Clerks could properly be assigned to others.

This defense is of no avail to the Carrier under the facts of this case. Here, the record is clear that the work of the position abolished remained to be performed; that some, if not all, of the work was assigned to and performed by an employe not covered by the Agreement. From its inception, this Board has consistently held that work performed by an employe occupying a position under Agreement coverage and which remains to be performed after the position is abolished may not be assigned to an employe not covered by that Agreement. (Awards 231, 631, 1209 are typical.)

Accordingly, this claim will be sustained.

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 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 18th day of December 1964.

DISSENT TO AWARD 13190, DOCKET CL-12756

This Award is in error because it fails to follow the now well-established principle that under a general scope rule, which merely lists positions, resort must be had to custom and practice proved by the Petitioner that the claiming craft, and it alone, to the exclusion of all others, has established an exclusive right to the work claimed. (Awards 11149, 11466 inter alia.)

The net effect of this Award is to hold that a City Ticket Agent cannot sell tickets -- a result which speaks for itself as to its soundness.

For these reasons, we dissent.

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