

Award No. 13880
Docket No. CL-13922

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, (GL-5290), that:

(a) The Carrier violated the current Clerks' Agreement when on or about October 1, 1961, it established a position titled Regional Agent, San Antonio, Texas, under the Telegrapher's Agreement and removed approximately two hours clerical work each day from the Chief and Rate Clerk and assigned it to the occupant of the so-called Regional Agent's position.

(b) N. J. Comstock, Chief and Rate Clerk, be paid two hours at the time and one-half rate of his regularly assigned position for November 15, 1961, and for each succeeding day thereafter until the work is returned to employees under the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: On February 23, 1959 the carrier established a Regional Station Bureau at San Antonio, Texas. While this bureau was located in the San Antonio Freight Station and under the general supervision of the carrier's Freight Agent at that point, it was staffed by employees holding seniority on roster Clerks on Line — San Antonio Division due to the fact that all of the work of the Bureau flowed from stations located in that seniority district. Exhibit No. 1. The purpose of the Bureau was to perform all station accounting work for all stations on the San Antonio Division except the San Antonio, El Paso and Eagle Pass stations and thereby eliminate clerical positions, not agents positions. At the time, the Bureau was established, three positions were created to perform the work in the Bureau; a Chief and Rate Clerk, a Cashier and an Accountant, all covered by all rules of the Clerks' Agreement. Shortly after the establishment of this Bureau and as a direct result of its establishment, cashiers' positions under the Clerks' Agreement were abolished at Del Rio, Uvalde, Seguin, Eagle Lake and Sugarland and a Porter-Trucker's position at Kerrville was abolished. Likewise the establishment of this Bureau had a similar effect upon the clerical employees in the accounting department because of the elimination of reports

also a duty and responsibility of theirs while they were in charge of the bureau prior to my assignment."

The Carrier's position is that the agent primarily is responsible for the prompt payment of charges due and the observation by patrons of the ICC Regulations in this regard. The Board will take particular notice of Mr. McCarty's statement that this handling of freight charges has been a part of his duties at every station to which he has been assigned as agent. Carrier affirmatively asserts that this is a fact at all stations on this property and that such are a part of the usual day-to-day duties of any agent.

CONCLUSION

Carrier asserts its position previously presented that the claim asserted by the Organization should be dismissed because the Order of Railroad Telegraphers is a third party involved in the dispute and the Board should take no action until that Organization has been given a notice of hearing, in accordance with Section 3 First (j) of the Railway Labor Act.

Without prejudice to this position but insisting upon it, the Carrier asserts that the claim presented by President Harrison is not the claim handled on the property by the General Chairman and cannot be considered by the Board.

Without prejudice to either of the foregoing positions, Carrier further asserts that the specific allegations of the General Chairman are not in accordance with the facts and that the claim must be rejected for that further reason.

Carrier further asserts that no claim based on the general proposition asserted by the Petitioner that it constituted a violation of the Clerks' Agreement for an agent to perform any of the work at an agency at which he was assigned could be supported by any agreement rule or practice thereunder, which would be a further cause for denial of the instant claim.

The respondent Carrier reserves the right if and when it is furnished with ex parte petition filed by the Petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the Petitioner in such petition and which have not been answered in this its initial answer.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier established a Regional Agency at San Antonio for the purpose of centralizing the accounting functions formerly performed at small stations on the San Antonio Division. The Organization alleges the work performed by the Regional Agency is strictly clerical in character and therefore, under the Scope Rule of the current agreement belongs to the Clerks.

We find the accounting functions formerly performed at small stations retained the character of accounting functions when performed at San Antonio Regional Agency, and we further find that the Organization having failed to prove it had the exclusive right to the performance of accounting functions at the smaller stations cannot now be heard to claim that these same functions become merely clerical functions when performed at San Antonio, and inure to it under the Scope Rule.

In the circumstances found we must deny the Claim.

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 30th day of September 1965.