

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Western Pacific Railroad, that:

1. The Carrier violates the parties' Agreement when, on the 27th day of January, 1958, it declared the Ticket-Agent-Telegrapher position at Marysville, California abolished, without in fact abolishing the work thereof, and assigned its performance to employees outside the Agreement.

2. The Carrier shall, because of the violation set out above, compensate the senior idle employe, extra in preference, a day's pay at the rate of the abolished position, for each and every work day on which employes, not subject to the Telegraphers' Agreement perform the work formerly attached to the Ticket-Agent-Telegrapher position at Marysville, until the work of the position is restored to the Agreement and to the Employees entitled to perform it.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective June 16, 1940, revised to January 1, 1953, and as otherwise amended.

The first Agreement (collectively bargained) between the Employees as represented by The Order of Railroad Telegraphers and the Respondent Carrier, in accordance with available records, was consummated August 1, 1914. This Agreement was amended November 1, 1916; October 1, 1918 (United States Railroad Administration); July 16, 1923; May 1, 1926; November 1, 1928; June 16, 1940, and as revised January 1, 1953, the current Agreement.

Rule 45 of the Agreement is the Wage Scale. Under this rule, at page 37, are listed the positions in existence at Marysville on the effective date of the Agreement. The listing appears as follows:

Station	Occupation	Hourly Rate
Marysville	Ticket-Agent-Telegrapher	\$1.73½
	Telegrapher-Clerks	1.70½

or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine months' period herein referred to.

2. With respect to all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule, and which have not been filed by that date, such claims or grievances must be filed in writing within 60 days after the effective date of this rule in the manner provided for in paragraph (a) of Section 1 hereof, and shall be handled in accordance with the requirements of said paragraphs (a), (b) and (c) of Section 1 hereof. With respect to claims or grievances filed prior to the effective date of this rule, the claims or grievances must be ruled on or appealed, as the case may be, within 60 days after the effective date of this rule, and if not thereafter handled pursuant to paragraphs (b) and (c) of Section 1 of this rule, the claims or grievances shall be barred or allowed as presented, as the case may be, except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred.

3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

4. This rule recognizes the right of representatives of the Organizations parties hereto to file and prosecute claims and grievances for and on behalf of the employees they represent.

5. This agreement is not intended to deny the right of the employees to use any other lawful action for the settlement of claims or grievances provided such action is instituted within nine months of the date of the decision of the highest designated officer of the Carrier.

6. This rule shall not apply to requests for leniency."
(Exhibits not reproduced.)

OPINION OF BOARD: On January 27, 1958, Carrier abolished the position of Ticket-Agent-Telegrapher at Marysville, California, a position within the Scope of the Agreement. Petitioner avers that work of the position was assigned to employees not covered by the Agreement.

This is a Scope Rule case. Petitioner, therefore, has the burden of proving that work of the position exclusively performed by employees covered by the Agreement was assigned to employees not covered.

The record does not reveal what work, if any, was assigned in violation of the Agreement, and to whom it was assigned. This is a fatal failure of proof. We, therefore, are compelled to dismiss the Claim.

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 the dispute involved herein; and

That we must dismiss the Claim for lack of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1966.