**Award No. 14875**
**Docket No. CL-15630**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**(Supplemental)**

**Gene T. Ritter, Referee**

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## 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-5742) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement in effect between parties, Monday, February 6, 1961, and subsequent Mondays thereafter when it failed to call Arthur J. Netto on his second rest day to perform duties emanating from and related to his regular assignment Tuesday through Saturday, and instead utilized and/or required an employe not covered by the scope of the Clerks' Agreement, viz. Agent-Telegrapher, Santa Cruz, California, to perform clerical work of selling tickets, taking reservations and giving out general information pertaining to tickets, schedules, rates, etc.

(b) The Southern Pacific Company shall now be required to compensate Clerk A. J. Netto, hereinafter referred to as Claimant, for eight (8) hours pay at the straight time rate of Position No. 10, Ticket Clerk, Santa Cruz, California, Monday, February 6, 1961, and subsequent Mondays that this violation existed and continued.

**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 employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. On February 6, 1961, Station force at Santa Cruz, California, consisted of the following positions:

(e) Compiled various reports on tickets, freight, baggage, pullman, milk and cream shipments

(f) Compiled switch list.

In connection with Item (b), the incumbent of the Ticket Clerk position at Santa Cruz handled passenger traffic for period February 6, 1961, to February 26, 1961, which totalled as follows:

| | TICKETS SOLD BY TICKET CLERK | | | |
|---|---|---|---|---|
| Date 1961 | Local Tickets Sold | Interline Tickets Sold | Pullman | Baggage Stamps |
| 2/6 to 2/26 | 51 | 16 | 5 | 2 |

4. By letter dated April 3, 1961 (Carrier's Exhibit "A"), Petitioner's Division Chairman submitted claim to Carrier's Coast Division Superintendent in behalf of Arthur J. Netto (hereinafter referred to as the claimant), the incumbent employe assigned to Position No. 10, Ticket Clerk at Santa Cruz, for one day's pay at the applicable straight-time rate for Monday, February 6, 1961, and each subsequent Monday thereafter, based on the allegation the Agent-Telegrapher at Santa Cruz was performing duties on claimant's second rest day which were performed by claimant during his regularly assigned work days Tuesday to Saturday. By letter dated April 19, 1961 (Carrier's Exhibit "B"), Carrier's Division Superintendent advised Petitioner's Division Chairman that the claim was denied.

By letter dated May 29, 1961 (Carrier's Exhibit "C"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated May 14, 1962 (Carrier's Exhibit "D"), the latter denied the claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Owing to a decline in freight and passenger business prior to January 27, 1961 at the Santa Cruz, California Station, the Clerical force had been progressively reduced and the freight office building had been closed. On February 6, 1961, the Santa Cruz station consisted of the following positions:

| Position | Title | Assigned Hours | Rest Days |
|---|---|---|---|
| No. 1 | Agent-Telegrapher | 9:00 am - 12:00 N<br>1:00 pm - 6:00 pm | Saturday<br>Sunday |
| No. 4 | Chief Clerk-Cashier | 9:00 am - 1:00 pm<br>2:00 pm - 6:00 pm | Saturday<br>Sunday |
| No. 10 | Ticket Clerk | 9:00 am - 1:00 pm<br>2:00 pm - 6:00 pm | Sunday<br>Monday |

Position No. 1 is covered by Telegraphers' Agreement.
Position No. 4 and 10 are covered by Clerks' Agreement.

The above Position No. 10 was advertised as, "Position No. 10, Ticket Clerk, hours 9:00 A. M. - 1:00 P. M. — 2:00 P. M. - 6:00 P. M., rest days Saturday

and Sunday, Santa Cruz, California." Claimant A. J. Netto was the successful applicant and was awarded Position No. 10 on January 27, 1961. On February 3, 1961 Claimant was served notice that rest days of this position were changed to Sunday and Monday. This schedule had the effect of this Station being without a Ticket Clerk on Mondays. Carrier did not provide relief, call an extra employe or Claimant on Mondays to perform Ticket Clerk duties attached to Position No. 10.

Claimant contends that the occupant of Position No. 1 — Agent-Telegrapher has been allowed to perform the duties of Position No. 10 — Ticket Clerk on Mondays in violation of the agreement.

Claimant further contends that Rule 20(e) is a special Rule which distinguishes this Claim from Claims based on exclusivity. Rule 20(e) is as follows:

> "(e) Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

Carrier contends that the clerical duties of Position No. 10 are not the exclusive duties of the employes represented by Petitioner; that the Agent-Telegrapher has always assisted or participated in the clerical duties assigned to Claimant herein; and that it is proper to assign the telegrapher to do the Clerks work on the Clerk's rest day.

Rule 20(e) is not a mandatory Rule unless it covers work exclusive to the occupant of the position under the Scope Rule of the agreement. (Award 5250 — Boyd) In the instant case, the Clerical work in question (Ticket Selling), was not protected by the Scope Rule of the Clerks' Agreement, and this Board has held many times that Clerks do not have the exclusive right to sell tickets (Awards 12808, 14604, 14327, 14085, 13680). Award 13038 — Coburn originated on this property and also held that Clerks do not have the exclusive right to sell tickets.

The mere fact that Claimant was assigned to "Position No. 10, Ticket Clerk", by an assignment Bulletin does not give that position exclusive rights to sell tickets (Awards 13195, 13371, 14155, 12434)

This Board has also repeatedly held that Clerical work, such as involved in this dispute, can be properly assigned to Telegraphers on the Clerk's rest day. (Awards 5250, 12926, 13284)

Award 13249 — Hamilton, states:

> "This Board has held on numerous occasions, that where the work at a particular location decreases, and there is telegrapher work remaining, it is proper to retain the telegrapher, and assign to him clerical work to fill out his tour of duty, when he is not occupied with telegraphy or communication duties."

In the instant case the record disclosed a marked and progressive decrease in business at the station involved herein. Claimant does not contend that

the efficiency of the station suffered because of his absence or that he was actually needed. It must therefore be concluded that the clerical work, or ticket selling duties were minimal on Claimant's rest days and that his duties could be easily handled by the telegrapher on Claimant's rest days. Under these circumstances, we believe Carrier had the right to act in this manner.

**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 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 21st day of October 1966.

**LABOR MEMBER'S DISSENT TO AWARD 14875, DOCKET CL-15630**

Award 14875, Docket CL-15630, is in error. It indicates a total unfamiliarity with, or a disregard for, the rules of the Agreement and the heretofore preserved craft and class lines established by the National Mediation Board in representation elections.

Although many foreigh criteria are set forth in Award 14875 the one most supported by the Referee in reargument, and the most erroneous one, is that involving "time" e.g., "Claimant does not contend that the efficiency of the station suffiered because of his absence or that he was actually needed. It must therefore be concluded that the clerical work, or ticket selling duties, were minimal on Claimant's rest days and that his duties could be easily handled by the telegrapher on Claimant's rest days."

The proper "test", however, is not whether someone outside the Agreement which covers Claimant's position had, or took, time to do the work of Claimant's position. The Agreement rules specifically provide the proper procedure for setting up relief for the rest days of employes — occupants of positions — in six or seven day service. Moreover, those rules apply only to employes in that particular bargaining unit and under that particular Agreement.

In fact, the "volume of work" simply is not controlling. Rather it is the class of work and the rules governing the assignment thereof which governs. See Awards such as 1611 (37 minutes), 1612 (20 minutes), 1729 (1 hour 12 minutes), 6284 (35 minutes), 8563 (25 minutes) and others which conclude:

**Award 1611, Referee Bruce Blake**

"* * * From the standpoint of time and money involved the violation does seem inconsequential. The principle involved, however, is not. The dispute presents a challenge to the integrity of seniority rights as agreed upon by the parties. To condone a seemingly slight violation would tend to undermine the basic structure of seniority rights. This the Board has consistently refused to do. See Awards 752, 753, 973, 975, 1403, 1440."

**Award 1729, Referee Edward M. Sharpe**

"It is also a cardinal rule that the Board does not modify agreements. Its function is to interpret them. It is undisputed that at least 15% of the work heretofore performed was removed from under the Agreement, and it must be held that such removal of **even a small portion of the work** was a violation of the Agreement." (Emphasis added)

**Award 6284, Referee Adolph E. Wenke**

"Reference is made to the fact that only a small amount of work is involved. But work of a class is made up of many small items of work and to open the door at all is to invite a further entrance until it is completely open and the agreement made ineffective. See this Divisions' Award 2282. But the work is not of an insignificant amount. Admittedly it involves 35 to 40 minutes of time in connection with each train. In addition to this it apparently would take some time to get to and from where the work must be performed. The claim is made for a 'Call' in each instance. We think this is the proper basis for the claim as it is the minimum basis of pay provided by the Agreement for calling an employe to do work."

**Award 8563, Referee Harold M. Weston**

"This rule is similar to Article II, Section 3 (i) of the Forty-Hour Work Week Agreement, effective, September 1, 1949. In its decision No. 2 the Forty-Hour Week Committee had that Section 3 (i) squarely before it and in that regard expressly ruled that

> 'Where work is required to be performed on a holiday which is not a part of any assignment the regular employe shall be used.'

"In the present case, it is clear that Labor Day was not a part of the F-52 assignment and was therefore an unassigned day. It is not disputed that the employe who performed the work in dispute was a regular F-5-F relief employe and not an 'extra' or 'unassigned' employe. Accordingly, since we have found that Claimant was the regular employe charged with performing that work, it is apparent, under Rule 4-A-1 (i), that he was entitled to be called by the Carrier to handle it.

The Carrier points out that the disputed work consumed only twenty-five minutes of the F-55 incumbent's working day on the

holiday in question. This argument has considerable emotional and 'first blush' appeal but, in our opinion, does not bear careful scrutiny and analysis. The protection of job classifications is a legitimate concern of employe representatives and quite generally is one of the prime objectives of collective bargaining agreements. To permit such protection to be eroded by any encroachment, even those that appear to be trivial, might easily impair the Agreement and its effectiveness in stabilizing employe-management relations. See Award 7022."

See also Awards 6689, 7427, 9393 and others relative to how rest day assignments must be made under the rules.

Furthermore, Rule 20(e), Work on Unassigned Days, was either ignored or considered invalid and of no force and effect unless, according to the Referee, "* * * it covers work exclusive to the occupant of the position under the Scope Rule of the agreement." Such a ruling simply ignores many Awards such as 12957, 13824, 14029, 14191, 14379, 14703 and 14704 which specifically answered that question by properly holding that under such rules the question of whether the work belongs **exclusively** to the Claimant is irrelevant because the work on unassigned day rule is specific and prevails over any general rule. I might add that "any general rule" properly includes those "Scope Rules" considered "General" as well as the general rule of "Exclusivity" promulgated by Referees at this Board. Especially one should have followed Awards 6019, 6562 and 13142 on this same property which had previously interpreted Rule 20(e).

The question presented to this Referee is an old old problem which has not been solved as evidence by the following:

See Question 1, Decision No. 3341, Docket 3390 of the old Railroad Labor Board Interpreting Decision No. 1621 of that Board effective **March 1, 1923.**

"Question 1. — Is it permissable to use an employee in some other class of service to relieve a clerk on his assigned day of rest, whether Sunday or some other day?

* * * * *.

"Decision — The decision of the Railroad Labor Board * * * is as follows:

"Question 1. — No."

In the report of Emergency Boards Nos. 161, 162 and 163 dated November 20, 1964 at page 17 with respect to Employes "Stabilization of Employment" proposals the Carrier made certain proposals and the report thereon reads:

"In exchange for the extension of these unemployment benefits, the Carriers request freedom to transfer or contract out work, abandon or consolidate facilities, **cross craft lines,** consolidate seniority districts, etc." (Emphasis added)

In 1953 Carrier had several requests before Emergency Board No. 106 and in the Board's introduction the report thereon reads in part:

> "The proposals of the Carriers are reproduced fully and discussed later in this report. In summary, however, of the fifteen demands for rules and working conditions changes remaining after sixteen of the original demands were withdrawn, two relate to the effect of putting any recommended proposals into practice and thirteen are designed according to the Carriers to relieve them of burdensome rules and practices which have impaired the efficiency of operations and the quality of service and have increased costs to the Carriers. In varying degrees the proposals relate to the impact of craft or class lines and of seniority on employment and on work assignments."

One example of the proposals read in part:

> "Establish a rule or amend existing rules to permit the Carrier * * * to designate the craft or class of employees * * * which is to perform the work and the seniority district or districts in which the work is to be performed."

As to that request the Emergency Board said:

> "The proposal has a double aspect — it seeks a solution of both inter-craft and inter-seniority questions which arise from technological advances.
>
> The Carriers state there are few, if any, rules in the present agreement which specifically limit the right of the Carriers to introduce new machinery and methods, but that, when in doing so, work is involved which was previously performed by two or more crafts or on two or more seniority districts jurisdictional disputes between the Organizations have resulted.
>
> They go on to state that this rule would make it clear that management will have the right to designate the craft or class of employees to perform work on assignments created by the introduction of new machines, changed methods of performing work, or technological changes which eliminate or combine work previously performed by two or more crafts or on two or more seniority districts.
>
> If a protest is made by one or more of the crafts as a result thereof and the dispute cannot be settled by negotiations, they state it will then be submitted for final decision to a board of arbitration as provided for by their Proposal No. 16.
>
> * * * * *.
>
> Class or craft lines in the industry, and seniority which has been built up over the years based thereon, should, when it is reasonably possible to do so, be protected and not be permitted to be arbitrarily destroyed."

The present case did not involve new machines etc., rather it involved a member of another craft and class performing the necessary work of the

clerk's position on Mondays while the clerk was assigned to perform that work Tuesday through Saturday and no relief position had been established, yet, compare the requests and the report thereon by the Emergency Board reading in part:

> "Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find we cannot approve it. We therefore recommend that the Carriers withdraw it and that they may do so without prejudice either as to the merits of the proposal or to the right to again present and prosecute it in some other proceeding."

with the possible result flowing from this erroneous Award 14875 wherein the Referee has permitted, or attempted to permit this carrier, under the guise of an interpretation to have precisely that which it has been unable to secure in negotiations.

See too Article III of the February 7, 1965 Agreement wherein Section 1 reads:

> "The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protection benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees through the system **which do not require the crossing of craft lines.** * * *." (Emphasis added)

Thus one can readily see, if they were uninformed before, that what the Carrier has been unsuccessfully seeking for many years has now been offered by the present Referee under the guise of an interpretation.

Simply stated the author of Award 14875 read into the Agreement, if indeed he considered any Agreement, rights which were never granted the Carrier. The erroneous decision in this case offers to destroy completely the fabric of the 40-Hour Week Agreement and the craft and class lines by setting up an "interchange" of duties between members of separate and distinct bargaining units.

While many more examples could be cited suffice it to say that the Referee should have followed the rules of the Agreement he was charged with interpreting and the prior awards on the same issues rather than acting as an "efficiency expert" and trying to give Carrier that which they were unable to secure in negotiations.

The Award is in complete error and cannot be accepted as precedent in the face of all the history behind such an attempt to intermingle the separate and distinct classes of employes holding separate and distinct agreements. I therefore dissent.

/s/ D. E. Watkins
D. E. Watkins, Labor Member
11-18-66

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