

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5811) that:

(1) The Carrier violated the terms of the current Agreement at Madill, Oklahoma when on the dates shown in Part (2) it required or permitted Agent-Telegrapher, an employee who holds no seniority or other rights under the Clerks' Agreement, to perform on an overtime basis work which is regularly assigned to and performed by Claimant, outside the hours of Claimant's clerical assignment.

(2) Aaron N. Nunley now be allowed four hours at the overtime rate of his position of Warehouse Clerk, rate \$20.26 per day plus subsequent wage increases, on each date, April 12, 26, May 3, 9, 10, 16, 17, 23 and 31, June 21, 28, July 26, August 16, 30, 1964 and three hours at the overtime rate for June 8 and 14, 1964.

EMPLOYEES' STATEMENT OF FACTS: The forces at Madill, Oklahoma include an Agent-Telegrapher, hours of service 9:00 A. M. to 6:00 P. M. with one hour meal period, working Monday through Friday, rest days Saturday and Sunday, the rest days being protected by a Relief Agent-Telegrapher. Also at Madill is a Warehouse Clerk, hours of service 6:00 A. M. to 11:00 A. M. and 12:00 P. M. to 3:00 P. M., working Monday through Friday with rest days of Saturday and Sunday, no relief provided on the rest days of this assignment.

The position of Warehouse Clerk at Madill, Oklahoma was abolished on November 13, 1964 as indicated by Employees' Exhibit 1(c). Attached hereto are Employees' Exhibits 1(a) and 1(b) which are copies of the last bulletin and assignment on this position and it will be noted that the Warehouse Clerk position No. 8 is assigned the duties of checking and transferring freight, making necessary records pertaining to such transfers, deliver and accept freight for Madill proper and other duties which may be assigned by the Agent. The hours of this assignment were subsequently changed from 5:00 A. M. to 9:00 A. M. and 10:00 A. M. to 2:00 P. M. to 6:00 A. M. to 11:00 A. M. and 12:00 P. M. to 3:00 P. M. Under the heading of "Character of Work" and the phrase "other duties as may be assigned," Mr. Nunley was further assigned the duties of checking the yards, making passing reports, wheel reports and switch lists. On the claim dates of April 12, 26; May 3, 9, 10, 16, 17, 23 and 31;

June 21, 28; July 26; August 16 and 30, 1964, the Agent-Telegrapher performed the duties of checking the yards at Madill on an overtime basis on cars set out by trains, made passing reports, wheel reports and switch lists after his regularly assigned hours. On each of these claim dates, he made yard checks and lists ranging from a minimum of 39 cars to a maximum of 145 cars. as follows:

April 12, 1964 — 70 cars
April 26, 1964 — 133 cars
May 3, 1964 — 93 cars
May 9, 1964 — 103 cars
May 10, 1964 — 123 cars
May 16, 1964 — 54 cars
May 17, 1964 — 98 cars
May 23, 1964 — 86 cars
May 31, 1964 — 40 cars
June 8, 1964 — 145 cars
June 14, 1964 — 67 cars
June 21, 1964 — 39 cars
June 28, 1964 — 42 cars
July 26, 1964 — 57 cars
Aug. 16, 1964 — 52 cars
Aug. 30, 1964 — 58 cars

All of the work performed by the Agent-Telegrapher on the dates in question has been exclusively assigned to and performed by clerical employees for many, many years.

These claims have been handled with Management up to and including the Director of Labor Relations, but not composed. See Employees' Exhibits 2(a) through 2(j) inclusive.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The instant dispute arose at Madill, Oklahoma. On the date of the claim, the station force at Madill consisted of two positions: one was a seven-day Agent-Telegrapher position with assigned hours from 9:00 A. M. to 6:00 P. M., including lunch period, Monday through Friday, with rest days of Saturday and Sunday. The rest days of the position were included in a relief assignment. The other position was a five-day Warehouse Clerk position with assigned hours of 6:00 A. M. to 3:00 P. M., including lunch period, Monday through Friday, with rest days of Saturday and Sunday. The rest days of the position were not filled.

The Agent-Telegrapher was used on the claim dates on an overtime or call basis to perform work growing out of the Agent-Telegrapher position.

OPINION OF BOARD: At the time of the instant dispute, Carrier maintained a force at Madill, Oklahoma which included an Agent-Telegrapher with assigned hours from 9:00 A. M. to 6:00 P. M., with one hour meal period, seven days per week and a Warehouse Clerk with assigned hours from 6:00 A. M. to 3:00 P. M., with one hour meal period, five days per week. The regularly assigned incumbent of the Agent-Telegrapher position worked from Monday to Friday, inclusive, and a Relief Agent-Telegrapher filled the position on the

Saturday and Sunday rest days of the regular incumbent. The Warehouse Clerk worked from Monday to Friday, inclusive, and the position was not filled on Saturdays and Sundays.

On the dates set forth in the Claim, the Agent-Telegrapher was required to perform service outside of his regularly assigned hours covered by the scope of the Telegraphers' Agreement. The parties agree that the Agent-Telegrapher was also required to prepare various clerical reports, including the preparation of switch lists on wheel reports of cars set off or picked up by various trains, during his overtime service on the claim dates.

Petitioner contends that the clerical work performed by the Agent-Telegrapher is work covered by the Scope Rule of the Clerks' Agreement, which has been exclusively assigned to and performed by clerical employees for many years at Madill, Oklahoma. The instant claim was duly filed and processed on the property before submission to this Board for determination.

Carrier's position is that the Agent-Telegrapher was used on overtime, or a call basis, on each individual claim date primarily to copy train orders, issue clearance cards, transmit consists and operate the CTC Machine. Carrier admits that clerical work was performed on certain claim dates by the Agent-Telegrapher but that such work in dispute was incidental to the work for which he was called. Therefore, that the performance of the disputed work during the course of performing telegraphic work did no violence to the Clerks' Agreement.

Petitioner asserts the Claimant is assigned to perform the disputed work during his regular hours of assignment and that Carrier violated the Clerks' Agreement, the Scope Rule and other pertinent provisions thereof, when it required another employee under a different Agreement to perform such work on an overtime basis. Petitioner offered in evidence copies of bulletins advertising positions of Warehouse Clerk and Relief Stowman-Yard Clerk, respectively in support of its position that the disputed work belonged exclusively to the position held by Claimant under the Clerks' Agreement. Petitioner cites Award 12 of Special Board of Adjustment 194, involving a dispute between the same parties, as controlling precedent in this controversy.

The Scope Rule contained in the Clerks' Agreement lists various classifications of employees without defining the specific work reserved to these employees. It is well established on this division under such scope rules that the work performed must have been traditionally and customarily performed on a system-wide basis by the employees covered by the particular Agreement to the exclusion of all others. The burden of proof through competent evidence is upon the Petitioner. Awards 4827, 12787, 13460.

Petitioner has failed to offer positive evidence that the disputed work has been exclusively assigned to clerks on a system-wide basis by practice, custom and tradition. In fact, Petitioner's assertions concerning past practices are confined to clerical employees at Madill, Oklahoma.

Although Petitioner has offered in evidence copies of bulletins advertising clerical positions in support of its contention that the disputed work belongs exclusively to the positions held by Claimant, at Madill, this Board has held that such evidence cannot be employed to modify or destroy legal relations such as those embodied in the basic Agreement between the parties. Awards

13195 and 13277. Carrier denies that the disputed work has traditionally and customarily been exclusively performed by clerical employes and that the bulletins do not specifically describe or delineate such work. Accordingly, the Board finds the bulletin evidence is not competent proof that Carrier conferred this work exclusively upon the clerical position held by Claimant.

The gravamen of Petitioner's case is found in Award 12 of Special Board No. 194 wherein it was held that the performance of certain overtime clerical work by a telegrapher violated the Agreement between the parties. The record herein disclosed that the claim sustained by that Award resulted from a situation in which an Agent-Telegrapher was called to perform overtime duties that were solely clerical. In the instant controversy, Carrier contends that the Agent-Telegrapher was called and used primarily to perform telegraphic work and that the disputed clerical work performed was merely incidental to such primary duties on each claim date. Carrier has offered in evidence a computation of work performed and time spent by the Agent-Telegrapher on such work during each of the claim dates contained in part (2) of this claim. Petitioner has offered no probative evidence to refute the analysis offered by Carrier in support of its position that the primary duties performed were those of a Telegrapher and that the basic requirement was communication and not clerical. Had the Agent-Telegrapher performed only clerical duties or primarily clerical duties, we would be inclined to agree with Petitioner that Award No. 12 of Special Board of Adjustment was controlling and that the work belonged to the clerk position. However, the evidence before us does not support such a finding.

In view of the foregoing, the Board has no alternative but to find that Petitioner has not sustained the burden of clearly establishing, by evidence of probative value, that the disputed work has been exclusively assigned to and performed by clerical employes throughout the Carrier's system by practice, custom and tradition. Accordingly, we shall 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 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 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 16th day of November 1966.

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