

Award No. 17983
Docket No. TE-17837

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Rock Island and Pacific Railroad, that:

CASE NO. 1

1. The Carrier violates the provisions of the Agreement between the parties hereto when on August 15 to September 2, 1966, inclusive, it permitted Ruth N. Blair, a telephone operator at Rock Island, Illinois, a position within the scope of the Clerks' Agreement, to perform printer operator's work for eight hours daily in its Rock Island Relay Office.

2. Carrier shall now be required to pay the senior idle regular assigned printer operator in its Relay Division, a day's pay of eight hours for each day of violation.

CASE NO. 2

1. The Carrier violates the provisions of the Agreement between the parties hereto when on July 22 to August 19, 1966, inclusive, it permitted C. J. Joule, a clerk at El Reno, Oklahoma, a position within the scope of the Clerks' Agreement, to perform printer operator's work for eight hours daily in its El Reno Relay Office.

2. Carrier shall now be required to pay D. H. Baker a day's pay of eight hours time and one-half rate for eighteen days, July 22 to August 19.

EMPLOYEES' STATEMENT OF FACTS:

STATEMENT OF THE CASE

The two disputes in this submission arose when the Carrier used employees who held seniority under the Brotherhood of Railway Clerks to perform work on vacation vacancies at Rock Island Relay Office and at El Reno

5. To avoid burdening the record, Carrier has not included copies of the correspondence presented on the property concerning this claim, as it is anticipated the Brotherhood will produce such correspondence as a part of its submission. However, Carrier will refer to various portions of this correspondence, as necessary, and will reproduce pertinent portions of same where appropriate. Carrier will also take exception in its rebuttal statement to any errors or omissions in the Brotherhood's reproduction of such correspondence.

6. This Carrier would further point out that on the property the Organization did on December 8, 1967, request the Carrier to hold the claim identified as Case No. 2 in this dispute in abeyance "to be guided by the principle that may be established in the case covered by" the claim identified as Case No. 1 in this dispute. In this connection, on February 2, 1968 Carrier advised General Chairman M. F. Van Gorp of the Organization as follows:

"We are agreeable to holding the instant claim in abeyance to be disposed of on the basis of the principle established by the Third Division of the National Railroad Adjustment Board in the claims of Printer Operators J. L. DeLozier, K. L. Hammond and M. A. Reed for various amounts during the period August 15 through September 2, 1966, account Ruth M. Blair used as a vacation relief printer at Rock Island, Illinois, covered by your file 145-323, Carrier's file L-123-1201."

OPINION OF BOARD: This dispute involves two separate claims:

Case No. 1 alleges improper use of a telephone operator, subject to the terms of the Clerks' Agreement, to perform vacation relief work on a printer operator position covered by the Telegraphers' Agreement.

Resolution of the issue posed by this dispute would require a determination of the status of the relief employe at the time she performed the vacation relief work. The record is inadequate for such a determination because the parties' assertions are in conflict. The Board has no means of resolving such conflict; and, since the burden of establishing grounds for complaint rests with the petitioner, and has not been met here, the claim must be denied.

Case No. 2 alleges improper use of a clerk to fill a temporary vacancy in a printer operator position while its incumbent was absent due to illness.

Here again the parties are in conflict concerning the status of the employe alleged to have been improperly used. However, Carrier's assertion, in its ex parte submission, that this employe was in fact an extra employe under the Telegraphers' Agreement, and did not become an employe under the Clerks' Agreement until after the printer operator vacancy terminated, was not denied by the Employes.

Under these circumstances, this claim also must be denied.

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;