

Award No. 18906
Docket No. CL-13660

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Daniel House, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5231) that:

1. Carrier violated and continues to violate the Clerks' Rules Agreement at Harlowton, Montana when it removed ticket selling and accounting work in connection therewith from positions and employes covered by the Clerks' Agreement and assigned that work to the Agent and Operators, employes not covered by that Agreement.

2. Carrier shall return the work of selling tickets and accounting work in connection therewith to the scope and application of the Clerks' Agreement and the employes covered thereby.

3. Carrier shall compensate the employe, who is the senior furloughed employe in Seniority District No. 44 on each day the violation exists, for eight (8) hours at the straight time rate of pay which would have been applicable to Ticket Clerk Position No. 136 had that position been retained in effect; such compensation to be made for each day Sunday through Saturday retroactive 60 days from July 7, 1961, and for each day thereafter the violation continues.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 2, 1953, the Carrier maintained a position of Ticket Clerk at Harlowton, Montana identified as Position No. 136. This was a seven day position with rest day service included within a regular relief assignment. Both the regular and relief positions were covered by all the rules of the Clerks' Agreement.

On January 29, 1953, Notice No. 4 was issued by Superintendent J. T. Hayes abolishing Position No. 136 Monday through Friday effective February 2, 1953. Copy of Notice No. 4 is submitted as Employees' Exhibit A.

Effective with the abolishment of Position No. 136, the ticket selling and accounting work in connection therewith, formerly performed on Position No. 136 Monday through Friday, was combined with the duties of Cashier

September 1, 1949

Agent
First Operator
Second Operator
Third Operator

The first Agreement with the Clerks' Organization on this property became effective January 1, 1920, or, in other words, almost 17 years after the first Telegraphers' Agreement and 6 years after Harlowton first appeared in the Telegraphers' Agreement revised effective September 1, 1914, and has subsequently been revised on February 1, 1922, November 1, 1929, January 16, 1946, and September 1, 1949.

Ticket Clerk Position No. 136 was first established at Harlowton, Montana, during World War II for the express purpose of assisting the Agent and/or Operators in the performance of that part of the station work which because of the volume then involved, the Agent and/or Operators were unable to perform.

However, when the station work in excess of the capacity of the Agent and/or Operators, or, in other words, the portion participated in by the ticket clerk, ceased to exist, the need of the Agent and/or Operators for the assistance of the ticket clerk also ceased to exist, and Ticket Clerk Position No. 136 was abolished February 2, 1953.

There is attached, as Carrier's Exhibit A, copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of October 30, 1961, s Carrier's Exhibit B copy of letter written to Mr. Amour to Mr. Gilligan under date of December 13, 1961 and as Carrier's Exhibit C copy of letter written by Mr. Amour to Mr. Gilligan under date of May 15, 1962.

(Exhibits not reproduced.)

OPINION OF BOARD: *The Record in this dispute reveals:*

(1) Ticket selling and accounting incident thereto was assigned to telegraphers effective with notice issued in writing by the Assistant Superintendent under date of November 18, 1958; (2) Claims were filed by individual clerical employes beginning November 21, 1958 "account operators selling tickets" and "acct ticket sales and reports which is established clerks' work at Harlowton is now being done by Operators"; (3) Claims were timely denied by the appropriate Carrier representatives; and (4) Claims were never progressed under the time limit rule of the Agreement.

Article V, Section 1 (b) of the August 21, 1954 Agreement provides:

"If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. * * *" (Emphasis ours.)

Inasmuch as this alleged violation was not progressed within the 60-day period following declination by Carrier, the matter, under Section 1 (b) was "considered closed" except as to other similar claims or grievances.

We must find that this claim represents the same contended violation which was "considered closed" due to inactivity of Petitioner on the 1958 claims.

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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December, 1971.