

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **19652**  
Docket Number CL-18979

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-6828**)  
that:

1. Carrier **violated** the Clerks' Agreement when, effective July 1, 1969, it established the position of Assistant Agent at Bismarck, Missouri, **to** perform clerical duties at that station, in violation of Scope Rule 1 and related rules of the Clerks' Agreement.

2. The Carrier shall be required to compensate **Mr. E. S. Baker, the** senior **employee** on the Missouri Division clerical seniority roster and district, for eight hours at the punitive rate of \$38.19 per day, for July 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, 1969, total 11 claim dates, **amount** \$420.09, with claims continuing for the claimant or his successor(s) for each subsequent work day, Monday through Saturday, until the violation is corrected and the work in dispute returned to the scope and operation of the Clerks' Agreement.

(Note: Claims are subject to all wage increases obtained subsequent to the first claim date.)

OPINION OF BOARD: The claim is that Carrier violated the Agreement when it established the position of Assistant Mobile Agent, **Bismarck,** Missouri, effective July 1, 1969, under the Telegraphers' Agreement to perform duties covered by the Clerks' Agreement. The Transportation-Communication Division of the Petitioning Organization has been given third-party notice: however, the T-C Division has not filed a submission.

Prior to July 1, 1969, the Carrier maintained the following forces under the Order of Railroad Telegraphers' Agreement (now Transportation Communications Union) at Bismarck, Missouri:

Agent - Telegrapher	7AM to 3PM	6 days per week
Telegrapher*	3PM to <b>11PM</b>	7 days per week
Telegrapher*	<b>11PM to 7AM</b>	7 days per <b>week</b>

(\*) Relieved on rest day by Rest Day Relief Telegrapher.

On July 1, 1969, the Carrier established an additional position under the **TCU** (Telegraphers) Agreement, entitled Assistant Agent, with assigned hours **8:30 AM**

to **4:30PM**, six days per week, Monday through Saturday, rest day Sunday, to perform clerical work in connection with the stations served by the Mobile Agency, headquartered at **Bismarck**, and also to assist the Agent-Telegrapher at Bismarck, Missouri, in the performance of clerical work at that station.

The Organization's claim that the Assistant Mobile Agent position should have been a clerk position was made in an August 18, 1969 letter from Division Chairman O. L. Guth to Superintendent A. **W. Rees**. In pertinent part the letter stated:

"The above assignment of the Assistant Agent results in a duplication of telegraphic service because of both the **Agent-Telegrapher** and Assistant Agent being assigned during the same hours and both performing clerical work to fill out their tour of duty, Monday through Saturday.

It is not necessary to have a duplication of telegraphic force at Bismarck, Missouri, and such assignment is in violation of Rule **1** and related rules of the Clerks' Agreement. If additional force was necessary to perform the clerical work, then a clerical position subject to the Clerks' Agreement should have been established instead of the Assistant Agent position."

Carrier's defense on the property was that the disputed position was covered by a provision in a January 20, 1969 Agreement with the Telegraphers and that, in negotiating such Agreement, it received assurances of the concurrence of the Clerks' Organization in respect to the provision. The pertinent provision reads as follows:

"If it is necessary to increase the station force at the base station or headquarters of the mobile agent or agents as a result of the establishment of 'mobile agency service', one assistant agent-telegrapher position will be established...."

Petitioner concedes that the Clerks' Organization did give its concurrence in the **establishment** of an Assistant Mobile Agent position on March 2, 1968, in connection with a trial program at Alexandria, Louisiana, but asserts the concurrence was limited to this situation. Petitioner also says it did not receive a copy of a particular document and, for that reason, objects to the Board's consideration of the document.

We find no merit to Petitioner's objection to the document. The subject of concurrence was the central point of Carrier's defense and the import of the particular document was fully discussed with Petitioner. Furthermore,

on the record before us, we have no doubt that the disputed position was covered by the above quoted provision from the Telegraphers' Agreement of January 20, 1969, and that the provision received concurrence from the complaining Organization. It is clear that such concurrence was a **prin-** cipal issue in Carrier's negotiations on the position with the Telegraphers and that Carrier would not have proceeded as it did in the absence of such concurrence. In addition, **a** handwritten notation on the above mentioned document corroborates Carrier's position on **concurrence** and the Petitioner has not submitted any overriding evidence. Accordingly, we shall dismiss 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 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 the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. G. Killian  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.