

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
PERE MARQUETTE RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Pere Marquette Railway Company that; the hourly rate of pay for the first trick operator-cashier, 63¢ at Harbor Beach, Michigan, should not have been reduced to 60¢ per hour when the force in the office was reduced on October 17, 1931, and the tour of duty of the position changed from 8:00 A. M. to 4:00 P. M., to 12:00 Noon to 8:00 P. M., and, that; the schedule rate of this position (63¢ an hour until August 1, 1937 and 68¢ an hour since) shall be reinstated retroactively to the date the change in the rate was made and all employes who have occupied the position during the interval be reimbursed accordingly."

EMPLOYES' STATEMENT OF FACTS: "Prior to October 17, 1931, the station force at Harbor Beach, Michigan, consisted of Agent-operator, First Operator-cashier and Second Operator-clerk, and so listed in the Telegraphers' Agreement, effective May 16, 1937, which schedule is still in effect.

"On October 17, 1931, the force was reduced and the incumbent of Second Operator-clerk position cut off. The incumbent of First Operator-cashier remaining in the service at Harbor Beach, Michigan.

"The assigned hours and rates of pay of the two positions involved before the reduction in force took place on October 17, 1931, were as follows: First Operator-Cashier, 8:00 A. M. to 4:00 P. M., rate 63¢ per hour; Second Operator-Clerk, 1:00 P. M. to 9:00 P. M., rate 60¢ per hour.

"On October 17, 1931, the date the reduction in force was made effective, the assigned hours and rate of pay for the remaining position was as follows: 12:00 Noon to 8:00 P. M., rate 60¢ per hour, the management contending the First Operator-Cashier position having a rate of 63¢ per hour had been cut off.

"After the force had been reduced one position on October 17, 1931, the incumbent of the First Operator-Cashier position remained in the service at Harbor Beach and continued to perform the duties of the First Operator-Cashier position just as he had done theretofore and in addition to this take over some of the work of the Second Operator-Clerk position. The incumbent of Second Operator Clerk position was reduced out of the service at this station. But despite this fact the First Operator-Cashier rate 63¢ per hour was discontinued and the 60¢ rate which was the rate of the Second Operator-Clerk position, was substituted therefor.

all accounting clerical work. The installation of this system eliminated eleven voluminous accounting reports, cash book, freight received register, prepaid forwarded register, and the making of monthly balance sheets. In all, the accounting work was reduced approximately 90%. After the abolition of the position and until the installation of the Zone Accounting System on January 1, 1932, a period of two and a half months, this work formerly handled by the operator-cashier was handled by the agent and he, of course was relieved of it upon the installation of the system. The present second operator-clerk does not and never has handled this work.

"This Zone Accounting System, together with a material reduction in business, therefore brought about the elimination of the operator-cashier's position.

"It appears to be clearly evident that in fact the position of 1st operator-cashier was abolished, but in any event it is for the management to say what positions are to be discontinued and which are to be retained.

"The carrier also points out that this change was made effective by the company October 17, 1931. No complaint has ever been received from the employees or the district representatives of The Order of Railroad Telegraphers and the first knowledge the carrier had of any objection or protest was when General Chairman, Mr. R. M. Burr, wrote the Superintendent under date of September 20, 1937, and made claim that the position of operator-cashier had not in fact been discontinued (Carrier's Exhibit 1). Thus, nearly 6 years have elapsed before making objection, which should be conclusive evidence of the lack of merit of the petitioners' claim, and the carrier, therefore, respectfully requests that this division deny the claim. It may be further pointed out that Article II, Paragraph b, of the agreement between the carrier and the telegraphers (Carrier's Exhibit 2) requires the employe to object within 10 days of the date of the action of the employer complained of, and as before stated, no objection was raised by the employe or his representative except as previously stated."

OPINION OF BOARD: Prior to October 17, 1931, the station force at Harbor Beach, Michigan, consisted of Agent-Operator, rate 67 cents per hour; one Operator-Cashier, rate 63 cents per hour; and one Operator-Clerk, rate 60 cents per hour. On that date the force was reduced by the abolition of the Operator-Cashier position.

Petitioner contends that the work now being performed by the Operator-Clerk is the same as that formerly performed by the Operator-Cashier, and for that reason the position should be re-established and the position of Operator-Clerk abolished. Claim is, also, made for wage losses suffered as the result of the alleged improper abolition of the Operator-Cashier position.

Carrier established a Zone Accounting System about the same time the Operator-Cashier position was abolished and contends that upon the establishment of said accounting system the major portion of the accounting work theretofore performed by the Operator-Cashier disappeared and that this condition still prevails.

Despite the fact this claim is predicated upon the contention that the Operator-Clerk is now performing the work formerly performed by the Operator-Cashier, the record did not contain sufficient evidence to enable the Board to decide the case. To overcome this deficiency, carrier was requested at the hearing before the Board, to submit samples of accounting work performed at stations before and after Zone Accounting was established. The parties were, also, requested to file with the Board joint statements showing:

- 1.—The duties of Operator-Cashiers where such positions exist and the duties of the present Operator-Clerk at Harbor Beach.

2—The duties of Operator-Cashier at Harbor Beach prior to August 17, 1931 and the duties of Operator-Clerk at Harbor Beach after that date.

The requests were complied with and each party to the dispute contends that the information so furnished sustains its position.

Carrier points to the showing made as to the very substantial reduction in station accounting work resulting from the establishment of the Zone Accounting System. While the record supports carrier's contention in that respect, it is not in and of itself sufficient to warrant a denial of the claim. There may have still remained substantial work belonging to the Operator-Cashier position not common to the two positions which was transferred to the Operator-Clerk when the former position was abolished.

Petitioner points to the joint statements of the duties of the Operator-Cashier prior to August 17, 1931, and the duties of the Operator-Clerk after that date. And again, the record supports petitioner's contention that the statements show that the Operator-Clerk is now performing many duties formerly performed by the Operator-Cashier.

However, the record is still deficient in an important respect. It does not show the duties of the Operator-Clerk prior to the abolition of the Operator-Cashier position. It may well be that the Operator-Clerk was then performing the same character of work now being performed by him. It is entirely possible that when Zone Accounting was established the principal duties of the Operator-Cashier disappeared and such duties of his position as remained were common to the two positions.

It is always preferable to make final disposition of a claim of the character here presented where that is possible. However, the record is insufficient to justify such action in this case and it is necessary to remand the case to the parties for further handling on the property in conformity with this opinion.

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; and

That the dispute should be remanded to the parties to jointly develop the facts and make further effort to dispose of the case.

AWARD

Claim remanded in accordance with above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1939.