

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY

(L. C. Sprague, Rec.)

STATEMENT OF CLAIM: Claim of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Minneapolis and St. Louis Railroad that the Carrier violated the Clerks' Agreement,

(1) When on June 1st, 1938, without conference, negotiation and agreement between the respective parties, it removed certain work of the Cashier at New Ulm, Minnesota, from the scope and operation of the Clerks' Agreement and assigned said certain work to the Telegrapher at that station; and which Telegrapher holds no seniority rights under the Clerks' Agreement.

(2) When on June 1st, 1938, the Carrier assigned the Cashier at New Ulm, Minnesota, to a lower rated position which position had never existed and was never bulletined.

(3) That the position of Cashier be restored at New Ulm, Minnesota, and former Cashier C. H. Nicklaus be assigned to said restored position and compensated for all wage loss sustained from June 1st, 1938, less any money paid to him in partial adjustment of this Claim subsequent to June 1st, 1938.

EMPLOYEES' STATEMENT OF FACTS: On May 31, 1938, there existed at New Ulm, Minnesota, the following positions, subject to the scope and operation of the Clerks' Agreement:

Cashier	Rate \$5.35 per day
Clerk	Rate \$4.60 per day
Clerk	Rate \$4.60 per day

On June 1, 1938, the following positions existed and were established without bulletin:

Clerk	Rate \$4.60 per day
Clerk	Rate \$4.60 per day
Helper	Rate \$2.47 per day

The Helper here listed is also paid \$50.00 per month for two or three hours per day solicitation of traffic effective August 1, 1938.

Prior to time these positions were changed the Cashier's work consisted of the duties in Exhibit "A" and subsequent to this change and up to June 16, 1939, were as shown in Exhibit "B" and representing duties of new Clerk's position. This arbitrary action of changing duties of positions, of

August 1, 1938, to continue his services as a helper, and in addition, allow him \$50.00 per month for his part time service soliciting traffic.

POSITION OF CARRIER: Carrier believes that the conferences held with the representatives of the Clerks, and the Memorandum of Agreement resulting from those conferences covering its plan to centralize and coordinate its accounting system, includes the removal from service of a cashier at New Ulm.

When Centralized accounting was put into effect at New Ulm it removed any further need for the services of an exclusive cashier.

Carrier also believes that it has the right to more fully utilize the services of its telegrapher at New Ulm as it does at other stations where Agent-Telegraphers handle the accounts of this Carrier and where much of all service requirements are clerical. The Carrier has employed at Aberdeen, S. D., a cashier-telegrapher; at Watertown, S. D., two telegrapher-clerks, which positions are now and have been included in the Telegraphers' agreement for a long period of time.

Carrier's position is supported in Award No. 615 as well as in other awards. In Award No. 615 the following language is used:

"For obvious reasons in diminution of force a clerk cannot undertake or be accorded telegrapher's duties, but the converse is not true; on the contrary, where two positions are involved, one, that of a clerk, and the other that of a telegrapher, and one is abolished, the telegrapher, if any telegraph duties remain, has the absolute right to the position, including the assumption of the remaining clerical duties."

In Award No. 806, the following language is used:

"As this division has previously pointed out, there are few, if any, employes of a Carrier, from the president down to the laborer who do not perform some clerical work in connection with their regular assigned duties."

In Award No. 1418 your Board found that not all clerical work comes within Rule 2 and again stated that there are few if any employes of a Carrier from the president down to the laborer who do not perform some clerical work in connection with their regular assigned duties.

Telegraph service at New Ulm, while necessary, is limited to brief periods of time on each work day.

On the basis of the facts herein outlined, we feel that the claim should be denied.

OPINION OF BOARD: As has been noted from a reading of the respective positions of the parties there was a special memorandum agreement between the parties entered into on April 12, 1938.

Had the carrier lived up to the negotiations leading up to that agreement the claim would have to be denied because it is fair to say that the employes through their negotiations and correspondence agreed to the abolition of a "clerical position" at New Ulm, and since there was no understanding as to which clerical position was to go, the Carrier would have been within its rights in abolishing the cashier's job, on the assumption that the major part of his duties had been transferred to the Minneapolis office, which was the purpose of the whole consolidation scheme.

We think the carrier proceeded in good faith until it encountered the local situation at New Ulm when pressure was brought by some influential citizens to protect a member of the agent's family, and the carrier created the new position of helper for him without bulletining it.

It is to be noted that the memorandum agreement of April 12, 1938, contains the provision "consistent with the agreement effective September 1,

1934." If the negotiations leading up to the memorandum agreement of April 12, 1938 had been carried out we think the carrier's position would have been "consistent with the agreement effective September 1st, 1934." The statement of R. E. Ryan, Assistant General Manager of the Carrier in his letter to C. A. Boehme, General Chairman of the employees' organization on July 26, 1940 that "The change from station to centralized accounting removed any further need for a cashier at New Ulm" is not supported by the record. If it had been there would have been no occasion to transfer most of the work of cashier to the telegrapher and create the position of helper.

The employees contend, and it is not denied, "that substantially all of the cashier's work still remains at New Ulm, Minn., only a small part of the station work, the abstracting specifically, being transferred to the General Office at Minneapolis, Minn., and which abstracting never was a part of the cashier's work." This statement shows that the plan of centralization was not carried out as far as the station at New Ulm was concerned. We think the carrier admits this when it says, "The only factor that caused the carrier to change its plan about reducing the force at New Ulm and to do more for Helper Leary than contemplated is best explained by submitting some of the letters * * *."

That young Leary had lost his wife and had two small children to care for is an appealing circumstance of course, and the carrier's yielding to it is understandable from a humanitarian standpoint, but when it comes to written agreements "one must be just before he is generous."

That the cashier's work was covered by the agreement cannot be disputed and when it was arbitrarily, (and it was arbitrary when the carrier changed the plan) taken out from under the agreement and "re-arranged" (as the carrier puts it) the controlling agreement was clearly violated.

That part of the work could properly be handled by the telegraphers is beside the point, because as is pointed out in Award No. 615, relied on by the carrier, "What has been said does not, of course, permit arbitrarily switching (re-arranging) of a position from one agreement to the other merely to evade the rules of the one because of its higher wage rate."

Under the circumstances we conclude "that the carrier violated the Clerks' agreement as urged by the employees and the claim should be sustained."

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 carrier violated the Clerks' agreement as urged by the employees and the claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1942.