

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated, and continues to violate, the rules of the Clerks' Agreement when, effective January 9, 1945, it removed from the scope of said Agreement a clerical position at Wayland, New York, and assigned such position to an employe holding no seniority under the terms of the Clerks' Agreement; and

(2) That the Carrier shall be required to restore the clerical position at Wayland, New York, to the scope and operation of the Clerks' Agreement; and

(3) That all employes adversely affected by the arbitrary action of the Carrier shall be reimbursed for any and all monetary losses sustained retroactive to January 9, 1945.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 9, 1945, there existed, in the station at Wayland, a position designated as clerical, and covered by the terms of our Agreement. This position, rated at \$6.23 per day, was regularly assigned to John J. Hart, who is listed on the clerical seniority roster with a date of December 20, 1922.

The position, working from 1:00 P.M. to 10:00 P.M., daily except Sundays and holidays, lunch period from 5:30 P.M. to 6:30 P.M., had assigned duties as follows:

Check cars in yard.

Interchange cars at the P. S. & N. connection.

Make records to cover various yard, interchange, and station operations.

Prepare, record, and distribute waybills.

Trace shipments.

Handle mail and baggage on and off trains.

Make trip to Perkinsville daily, except Sundays and holidays, to check and handle freight.

“(b) Assistant Agents?”

“Answer: Yes, where they have charge of a station, or take the place of or perform work of an agent of the class coming within the scope of the Agreement.”

The Carrier's statement of facts clearly indicates the reclassifying of the position to Assistant Agent was strictly in accordance with the above decision. No basis existed in 1939, nor does a basis exist today, which would justify excluding the Agency work at Perkinsville from the scope of the Telegraphers' Agreement. The plain facts are that because the Telegraphers did not insist upon displacing the clerk incumbent who was performing the work in December, 1939, a member of the Clerks' Organization, has had the opportunity to fill in on the job for more than six (6) years after the jurisdictional dispute was first created by the ORT, and that organization should not now be penalized because of exercising a co-operative spirit in agreeing that the then incumbent could not be bumped so long as he held the position.

Summing up the situation, it is apparent that—

- (1) No clerical position exists at Wayland involving performance of work at Perkinsville—
- (2) The position of Assistant Agent (Perkinsville), designated in Rate Schedule of Agreement with ORT, does exist—
- (3) Because of protecting the incumbent from displacement, the BR&SC had the advantage of a position for more than six years—
- (4) There is no question that the work involved at Perkinsville is similar to that performed at any other station by employes coming under the Scope of Agreement with the ORT.

It is the position of the Carrier that there are no justifiable grounds for the successful prosecution of this case by the BR&SC.

OPINION OF BOARD: In July 1932, the Carrier abolished the position of Agent at Perkinsville, closed the Agency and transferred all the station accounts to the Agency at Wayland, approximately two miles distant. The Carrier thereon assigned one Hart, a Clerk employed in the Wayland Agency, to go to Perkinsville each day and perform the remaining work. In December, 1945, Hart bid in the senior Clerk position in the Wayland Agency. The position formerly occupied by Hart, designated as Assistant Agent subsequent to December 1939, was bulletined to employes under the Telegraphers' Agreement. An employe under the Telegraphers' Agreement was assigned to the position. The Clerks' Organization contends that it should have been bulletined to employes under the Clerks' Agreement.

Perkinsville was a one-man Agency prior to the abolition of the Agent's position and the closing of that Agency. The Agent's position was one within the scope of the Telegraphers' Agreement. In July 1932, the Agent's position was abolished and the remaining duties assigned to a Clerk (Hart) working in the Wayland office. During this period and until 1937, the Clerks were unorganized. They were, however, organized late in 1937, and on January 1, 1939, an agreement with the Carrier was negotiated and Hart was placed upon the Clerks' seniority roster as of the date of entering service on his position. In negotiating a revision of the Telegraphers' Agreement in 1939, the Telegraphers protested the Agency work at Perkinsville being performed by a Clerk. To protect the rights of the Telegraphers to the work, the Carrier established the position of Assistant Agent to perform the remaining work at Perkinsville, placed it under the Telegraphers' Agreement and entered into an understanding that the position would not be bulletined to the Telegraphers until the occupant (Hart) relinquished same. In accordance with this understanding, the position was bulletined to employes under the Telegraphers' Agreement when Hart relinquished it to assume the position of Senior Clerk at Wayland.

The principles applicable to the situation are fairly well established but their application to the facts is more difficult. Before the one-man Agency was abolished at Perkinsville, the Agent's position was within the scope of the Telegraphers' Agreement and he could properly perform the clerical work at that point. Upon the abolishment of the Agency, nothing but clerical work remained and it was performed for seven years by Clerk Hart without objection on the part of the Telegraphers' Organization. There was no Clerks' organization in existence during the greater part of that period. Clerk Hart was shown as a clerk on the Clerks' roster under the Clerks' Agreement negotiated on January 1, 1939. Also in 1939, the Telegraphers protested to the Carrier and working of this position by a Clerk. By agreement between the Carrier and the Telegraphers, the position was designated as Assistant Agent and placed under the Telegraphers' Agreement with the understanding that it would not be bulletined until it was relinquished by the then occupant, Hart. For almost six years, the position of Assistant Agent has been shown as a position under the Telegraphers' Agreement though occupied by a Clerk under the special arrangement. No objection was voiced by the Clerks' Organization until it was bulletined to the Telegraphers on January 9, 1945. The Clerks' Organization contends that it had no official notice of the placing of the Assistant Agent's position under the Telegraphers' Agreement or of the special agreement made with reference thereto. The Carrier asserts that the Organization has taken the position that no protest was made by it from December 1, 1939 to January 9, 1945, because the position of Assistant Agent was being filled by a Clerk and no reason to protest existed until the position became vacant and it was bulletined to the Telegraphers.

We are of the opinion that when the position of Agent was abolished and the Agency closed at Perkinsville, there was no Telegrapher's position remaining. This for the reason that the remaining duties were clerical in their nature, there being no handling of train orders or communications involved. Upon the disappearance of telegraphic work, the remaining work belonged to the Clerks. With this the Telegraphers acquiesced for seven years. It became a Clerk's position in fact and by acquiescence. Thereafter, in 1939, the Telegraphers and the Carrier negotiated this clerical position into the Telegraphers' Agreement. The Clerks were not a party to these negotiations and consequently were not bound by the Agreement thus made. Insofar as the Clerks were concerned, it was still a Clerk's position.

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 employes 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 current Agreement was violated as charged.

AWARD

Claim (1, 2 and 3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1947.