

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee.

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood in favor of Giles O. Philips at Amarillo, Texas, for the restoration of position of Ticket Clerk No. 2, rate \$255.32 per month, and reimbursement of all monetary loss sustained as a result of abolishment of this position, effective October 22, 1947.

(2) All other employes affected by this reduction October 22, 1947, be reimbursed for all monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing effective date of August 2, 1945 as to rules and working conditions is in effect between the parties to this dispute.

During the years of 1931 and 1932, Ticket Clerk positions were discontinued at Amarillo, Texas, and the work transferred to the Telegrapher-Operators, employes not covered by the Clerks' Agreement. Protests were made locally in regard to this transfer but inasmuch as the United States Labor Board was no longer in existence and the Third Division National Railroad Adjustment Board had not been established, there was no place where the employes could receive a hearing on such violations and receive a decision.

For the benefit of the record, we will quote reference as to various bulletins issued in 1925, 1926, 1927 and 1930, covering Ticket Clerk positions at Amarillo, which is prior to the discontinuance in 1931 and 1932.

10/24/25—Bulletin No. 41—Ticket Clerk 7:30 A. M. to 4:30 P. M.
—Rate \$130.00

6/16/26—Bulletin No. 22—Ticket Clerk 12:00 Midnight to 8:00
A. M. —Rate \$117.50

2/9/27—Bulletin No. 6—3rd Ticket Clerk 12:00 Midnight to 8:00
A. M. —Rate \$130.00

4/6/27—Bulletin No. 13—1st Ticket Clerk 8:00 A. M. to 5:00
P. M. —Rate \$140.00

9/25/30—Bulletin No. 37-A—Night Ticket Clerk 10:00 P. M. to
7:00 A. M. —Rate \$124.50

Rule 69. The Interpretation states that a statement will be furnished " . . . indicating remaining work on the position and proposed distribution of such remaining work" The statement as submitted by the Agent is incorrect, primarily because it shows eight hours of remaining work on the position to be reassigned. When asked why he showed eight hours remaining work on this position to be reassigned, the Agent said that there was not eight hours remaining work to be reassigned, but that he showed eight hours because the Claimant has been assigned eight hours per day and was being compensated on the basis of an eight-hour assignment. Actually the amount of work remaining on the position to be distributed was about three hours. Also the inbound abstracts mentioned in the statement was work which had formerly been performed at the freight house and had been brought to the ticket office a few months prior to the discontinuance of the position to fill in the unoccupied time of the second shift ticket clerk. The work reassigned to Operator-Ticket Clerk following the discontinuance of the position in question was the selling of tickets for Train No. 111 and the answering of the telephone and making reservations.

The departure time of Train No. 52 at the time the position in question was discontinued, was 2:45 P. M. Effective June 20, 1948, the time of departure was changed to 7:10 P. M. During the time that the train departed at 2:45 P. M., the first shift ticket clerk handled the tickets for this train. At the time the change in its departure time was made, we were in the midst of movement of a heavy wheat harvest in the southwest and also the detour of some trains of neighboring carriers. The number of train orders required at that time to be completed by the operator-ticket clerk was such that it necessitated paying the first shift ticket clerk overtime in the form of a call to handle the tickets on this train. When this heavy business decreased, the hours of assignment of the first shift ticket clerk were changed so that effective August 8, 1948, that position worked from 12:00 Noon to 8:00 P. M., and among other duties, this position handled the tickets for Trains Nos. 52 and 111.

The kind of work in question here has been performed by telegraphers for as long as we have had agreements with that organization on this property. The work being performed by the telegrapher on the second shift at Amarillo is incident to his telegraphic work. It has been recognized for many years that within well-understood limitations, the employees covered by the Telegraphers' Agreement may perform station work in conjunction with their exclusive telegraphers' work and likewise clerical employees can perform certain types of station work, but under no circumstances or conditions, or at no time has either had the exclusive right or monopoly in the performance of such work. The telegrapher, in this case, is available to perform and may perform this work in connection with his telegraphic duties. It is our understanding that we may assign a telegrapher clerical work incident to his telegraphic duties to fill out his assignment.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood asks that the position of Ticket Clerk No. 2 at Amarillo, Texas, be restored and that Claimant Giles O. Phillips, the occupant thereof when it was discontinued, and all other employees affected by the abolishing thereof be compensated for all monetary loss suffered by reason thereof, same to be retroactive to October 22, 1947, the date the position was abolished.

The record discloses that in 1925 and subsequent thereto Carrier had Ticket Clerks in its Amarillo, Texas, Passenger Station, although Telegraphers in this Station apparently had performed ticket selling duties some time prior thereto. In 1931 and 1932 Carrier discontinued these Ticket Clerk positions and transferred the work thereof to Telegraphers who, with their equipment, were moved from the second floor, where they were located, into the Ticket Office on the first floor to perform these duties. Due to the increase of passenger business caused by the outbreak of War Carrier, on May 15, 1942, again established a position of Ticket Clerk at Amarillo. Subsequently, on November 15, 1942, a second Ticket Clerk position was

established. This was apparently done pursuant to a settlement with the Clerks' Organization effective November 11, 1942, although the nature of this settlement is not shown. A third Ticket Clerk position was established on June 17, 1943. With the termination of War passenger traffic declined and, on February 21, 1946, Carrier abolished the position of Ticket Clerk last established and reassigned to the other two Ticket Clerks the remaining work of that position. When business further declined Carrier abolished the second position established as of October 22, 1947. That is the action out of which this claim arises. Carrier assigned the work of this position, not absorbed by the remaining Ticket Clerk, as follows: the ticket selling duties to Telegraphers and the work on Inbound Abstracts to Clerks in the Freight House. This latter work had very recently been assigned from the Freight House to Ticket Clerk No. 2 to help fill in his unoccupied time.

Carrier's contention that The Order of Railroad Telegraphers is an interested party and should have been made a party to this dispute is without merit and has been properly determined by this Division contrary to Carrier's contention. See Awards 2253 and 3932 of this Division.

Where, as here, the duties of a position have substantially decreased the Carrier, as stated in Interpretation 1 to Rule 69, has the right to abolish the position and distribute the remaining work thereof in accordance with Interpretation 2 to Rule 69, with the understanding that, so far as possible, it will be returned to the position or positions in the station, yard or office from which it originated. Interpretation 2 directs that Carrier give the Local and Division Chairmen notice, when a position is being abolished, indicating the amount of work remaining on the position and the proposed distribution thereof. Carrier gave such notice when it abolished the position of Ticket Clerk No. 2 and indicated therein that eight (8) hours of work remained. This was in error as only about 2½ hours of ticket selling duties remained. There was also about 2 hours of Inbound Abstracting work. The latter work was returned to the clerical position in the Freight House from which it originated. The ticket selling duties remaining, which were not absorbed by the remaining Ticket Clerk, were assigned to Telegrapher-Operators. Carrier is not conclusively bound by the error made and, having established that the work of ticket selling in the Amarillo Ticket Office had substantially decreased, was entitled to abolish the position of Ticket Clerk No. 2. Consequently the claim to have it restored is without merit. The question remains, could Carrier, under the rules of the parties' Agreement effective August 2, 1945, assign any of these ticket selling duties to Telegrapher-Operators, who are not under the Clerks' Agreement, or must they be assigned only to other clerical positions?

This Board has often said that there are few, if any, employees of a carrier, from the president on down, who do not perform some clerical work in connection with their regularly assigned duties; that the performance of such clerical work incident to a position by the occupant thereof who is not within the scope of the Agreement is not in violation thereof; and that if the clerical work incident to a position increases and is assigned to a position under the Clerks' Agreement and performed by the occupant thereof, then, if it decreases, Carrier may abolish the position and return the remaining work to the position from whence it came and to which it is incident. That is, clerical work incident to a position outside of a Clerks' Agreement may flow from such position to positions under the Clerks' Agreement and then, if it decreases, back to the position to which it is incident. See Awards 806, 1405, 1418, 2138, 2334, 3211, 3735 and 3989 of this Division.

Ticket selling is clerical work and this Board has said that a Telegrapher with telegraphic duties to perform may properly perform clerical work, which is incident to or in proximity of his telegraphic work, to such an extent as to fill out the telegraphic assignment. See Awards 4288, 4355 and 4477 of this Division. As stated in Award 4477:

"When the work of clerks exceeds that which the telegrapher can perform and it becomes necessary to increase forces, the excess clerical work belongs to clerks and must be assigned to them. If

the work recedes to the point where the telegraphers can perform it all, it is the clerks and not the telegraphers which must be cut off when telegraphic work remains to be performed."

On this Carrier, through custom and usage, it has been the practice to have Telegraphers do ticket selling in connection with their telegraphic duties, thus creating an exception to the Clerks' right to the exclusive performance thereof. Of course, the parties can provide otherwise by their Agreement. The parties' Agreement, effective August 2, 1945, provides in part, as follows:

Rule 1—Section 1. Scope—"These rules shall govern the hours of service and working conditions of the following employees subject to the exceptions in Section 2."

* * *

"Group 1. * * * Ticket Clerks (Sellers)."

Rule 1—Section 2(k) "The changing of the title of a position without actual reclassification of the duties assigned will not operate to remove the position from the scope of this schedule, unless by mutual agreement between the railway and representatives of the employees."

In view of these provisions and an examination of the Agreement as a whole, particularly Interpretation 2 to Rule 69, we do not think the parties, by their Agreement, have contracted to prohibit the Carrier from assigning some of the remaining duties of Ticket Clerk No. 2 to a Telegrapher which, by long continued practice and custom, this Carrier has always done.

We do not think the manner in which, or the purpose for which the telephone in the District Passenger Agent's Office was used was in violation of the Clerks' Agreement.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of September, 1949.