

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

(1) When on November 19, 1948, it removed overtime work from Clerk R. A. Hudspeth, Cashier-Yard Clerk at Caldwell, Kansas, consisting of calling crews and assigning said work to an employe holding a position as Telegrapher-Operator, the work being removed between the hours of 5:00 P.M. to 6:30 P.M.

(2) That R. A. Hudspeth shall be paid the actual overtime as claimed, continuous with his regular assignment each day the crews were called by an employe of another class and craft as stipulated in Exhibit "A."

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between the parties to this dispute, bearing an effective date of August 2, 1945.

November 18, 1948, Trainmaster M. Roberts issued the following instructions to the Agent at Caldwell, Kansas:

"SJB, CALDWELL, KANSAS

EL RENO 11/18

"Notice that it is practically a daily occurrence for Cashier to make overtime calling crews. I see no reason for holding this man on duty to call a crew when you have an operator on duty to do this work. In the future you will not hold the cashier but have the operator call the crews.

Mr. Roberts, Trainmaster."

November 19, 1948, Agent at Caldwell, Kansas, issued the following instructions to Operators and Clerks:

"OPERATORS

CALDWELL, KANSAS, Nov. 19, 1948.

"Notice instructions issued by M. Roberts that cannot hold Cashier to protect train crew calls between 5:00 P.M. and 6:30 P.M. Please be governed accordingly and protect as per instructed.

"CC CLERKS

S. J. Beaman, Agent."

The telegrapher receives information from the dispatchers and telegraphers by telephone and telegraph concerning the movement of trains. The telegrapher is normally the first person to know when a train should be called because he is the first employe to be in possession of such information. He is available and has time to call the crews. It is our understanding that we may assign clerical work to a telegrapher to fill out his assignment.

There is insufficient work in the calling of crews involved in this dispute to warrant the addition of another clerical position and under the circumstances it would be an undue financial burden upon the carrier to be obliged to pay overtime rate in the form of a call to an employe covered by the clerks' agreement for the performance of a small amount of service involved in the calling of crews between 5:00 and 6:30 P.M.

We shall be obliged, of course, to reserve reply to the specific details which evidently the petitioner will include in its Exhibit "A" referred to in Item 2 of its statement of claim in Grand President Harrison's letter of July 27, 1949.

(Exhibits not reproduced).

OPINION OF BOARD: Prior to November 19, 1948, the Claimant, a Cashier-Yard Clerk at Caldwell, Kansas, with hours from 8:00 A.M. to 5:00 P.M., regularly called Train and Engine crews between 5:00 and 6:30 P.M. on an overtime basis. At other hours around the clock crew calling was handled by other clerks, and this practice had prevailed since some date prior to August 2, 1945, when the current Agreement became effective. As of Nov. 19, 1948, Carrier assigned the work of crew calling between 5:00 and 6:30 P.M. to a Telegrapher-Operator then on duty with unoccupied time.

Reduced of all extraneous matter, the issue here presented may be simply stated as follows: Was the Carrier privileged to assign the crew calling work accruing during the hour and a half period involved as a part of the work of a regularly employed and available Telegrapher-Operator, or was it obligated, under the existing circumstances, to continue the pre-existing practice of having this work performed by the Cashier or some other clerical employe? It should be added, of course, that the Cashier was the occupant of a position covered by the Agreement with which we are here concerned, while the Telegrapher-Operator was not.

There have been many cases before this Board involving the question as to when and under what conditions work of a clerical nature, which would ordinarily come within the definition of the scope of the Clerks' agreements, may be performed by telegraphers. As early as Award No. 615, this Board declared, in part:

"It has always been the rule that telegraphers may be assigned clerical work without limit except their capacity to fill out their time when not occupied with telegraphy." (telegraphers' duties).

Subsequently, in Award No. 636, written by the same Referee, the general rule quoted above was limited to the extent that the clerical work which a telegrapher may perform to the exclusion of a clerk must exist, arise, or be immediately adjacent to the post of the telegrapher. Award No. 4477 further restricted the general rule laid down in Award No. 615, by holding that seven-day clerical positions can not be reduced to six-day positions and the work to be performed on the seventh day assigned to a telegrapher.

The Organization calls attention to the fact that "Train and Engine Crew Callers" are specifically named in the Scope Rule of the applicable Agreement, and urges that this precludes the assignment of the work here involved to the telegrapher, citing, among others, Award No. 3506. From this premise the Organization argues that to the general rule stated in Award No. 615 there must be recognized still another exception, namely, that when a particular type of work is specifically spelled out in the scope rule of the agreement, as distinguished from general clerical work, the former must be regarded as belonging exclusively under the Clerks' agreement.

In view of the narrow character of the question with which we are confronted, we deem it proper to quote liberally from Award No. 3506:

"The very use of the terms 'train and engine crew callers' designates a limited type of special work and is thus differentiated from general clerical work. The work of calling crews falls into its own special category and is not incidental to other positions. In this instance, therefore, we find the Scope Rule does classify the work to be performed as well as covering generally the positions included within the scope of the Agreement.....

"It follows that because of the express terms of the Agreement the work of crew calling now be said to be either incidental or normal to a position covered by some other agreement (such as operator).
.....

"Because the terms 'train and engine crew callers' are so descriptive of a definite type of work there is no room for any implication that there were outside conditions which deprive the Clerks of the exclusive right to such work given them by the Agreement, as argued in Award 615. Any such implication, if there was any, vanished when the Agreement was made."

Neither do we think that the fact that the work here involved normally consumed but an hour and a half per day and that it was previously performed by the Cashier-Yard Clerk on an overtime basis affords any justification for distinguishing the application of Award No. 3506. If, as therein pointed out, the work of crew calling, in a case like this, cannot be said to be either incidental or normal to a position covered by some other agreement, we see no basis left upon which the present claim may properly be denied if Award No. 3506 is controlling.

On behalf of the Carrier it was stated that Award No. 3506 stands alone and that it has been overruled by subsequent decisions, notably Awards Nos. 4477, 4559 and 4492. A careful reading of said Awards has not convinced us that they overrule Award No. 3506, either directly or by necessary implication.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreement.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of March, 1950.