

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) Carrier violated and continues to violate Rules 1 and 25 of the Clerks' Agreement when it refused and continues to refuse to permit Mr. Robert O. Robin and/or his successors, on position of Ticket Clerk, Deming, New Mexico, to sell tickets on Sundays and holidays.

(b) Robert O. Robin and/or his successors now be compensated eight (8) hours at the rate of time and one-half of his position for Sundays, March 23 and 30, 1947, and for each subsequent Sunday and holiday that he was denied the right to sell tickets, which duties are performed by him Monday through Saturday.

JOINT STATEMENT OF FACTS: 1. There is in evidence an agreement between the Carrier and its employees represented by the petitioner, bearing an effective date of October 1, 1940, which agreement (hereinafter referred to as the agreement) was in effect on the dates involved in the instant claim. A copy of the agreement is on file with this Board and is hereby made a part of this dispute.

2. Prior and subsequent to March 17, 1947, R. O. Robin (hereinafter referred to as the claimant) was occupying a regular assignment as Ticket Clerk at Deming, New Mexico, a station on the Carrier's Rio Grande Division; the rate of pay of said position being \$9.57 per day, and the assigned hours thereof, from 9:00 a.m. to 12:00 noon, and 1:00 p.m. to 6:00 p.m. Although, prior to March 17, 1947, the incumbent of the position of Ticket Clerk was assigned to work daily except Sunday, the claimant was required, in those instances when a qualified unassigned Clerk was not available, to work a period of eight (8) hours during the hours 9:00 a.m. to 6:00 p.m., on Sundays, for which service he was compensated at the time and one-half rate of his regular assignment in accordance with Rule 25¹ of the current agreement.

¹ **Rule 25.** Work performed on Sundays and the following legal holidays—namely: New Year's Day, Washington's Birthday; Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the Carrier and who are regularly assigned to such service will be

carrier submits that the fact situation involved in each of those awards is clearly distinguishable from the fact situation in the instant case and therefore those awards do not in any way support the petitioner's position in this docket.

The carrier has established that the claim in this case is in its entirety, without basis or merit, and therefore respectfully submits that it should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On January 5, 1937, Claimant was assigned to the position of Ticket Clerk at Deming, New Mexico. He was assigned daily, Sundays and holidays excepted. From September 30, 1931 to the date of Claimant's first assignment to the position, no Ticket Clerks were assigned to this office. Ticket selling and the work incidental thereto was performed by Telegrapher-Clerks. From January 5, 1937 to May 9, 1942, Claimant was not used on Sundays, the Sunday work being performed by the Telegrapher-Clerks. On May 10, 1942, Claimant was assigned seven days per week until March 17, 1947 when his assignment was changed to daily except Sundays and holidays. The ticket selling work on Sundays and holidays was again performed by the Telegrapher-Clerks. Claimant contends the Sunday work here in dispute belongs to the Clerks and that it was rule violation to assign it to Telegrapher-Clerks, they being employees not covered by the Clerks' Agreement.

During all the times herein mentioned, there have been three Telegrapher-Clerks working around the clock at this point. That they have performed ticket selling work in the past is clearly established. From September 30, 1931 to January 5, 1937, Telegrapher-Clerks handled all the ticket work. From January 5, 1937 to May 9, 1942, they handled the ticket work on Sundays and holidays without objection by the Clerks' Organization so far as the record shows. On May 10, 1942, Claimant was assigned seven days per week and until March 17, 1947 he performed ticket work every day in the week. There being a reduction of Sunday and holiday work in this office, the Carrier undertook to assign Claimant daily except Sundays and holidays, and to return the Sunday and holiday work to the Telegrapher-Clerks. The Organization contends this constitutes a violation of its Agreement with the Carrier in that the work belongs exclusively to the Clerks and consequently the Sunday and holiday work cannot properly be assigned to employees not covered by the Clerks' Agreement.

We think the position of the Organization is correct. Whatever may have been the practice prior to May 10, 1942, it is clear that all of the work of this position was assigned to the Clerks on that day. Until March 17, 1947, all of the work of this position was performed by Clerks seven days per week. The Carrier thereby placed it under the Clerks' Agreement and it became the exclusive work of the Clerks. We have repeatedly held that work performed six days a week by a Clerk under such circumstances is within the Scope of the Agreement on Sunday as well. Awards 4059, 3900, 3858.

We have not overlooked the rule that where the work of a Clerk recedes to the point where a Telegrapher necessary to Carrier's operations can perform it all, the Clerk's position is the one that must be cut off. But such is not the situation here. The Clerk's position has not been discontinued and consequently the work belongs to the Ticket Clerk under the Awards cited.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of March, 1950.

DISSENT TO AWARD 4832, DOCKET CL-4888: The error here is the disregard of this principle as repeated in the many precedent awards of Scope of the Clerk's Agreement because of its performance originally and at the time of negotiation of that agreement by employes covered by an agreement with another craft (Telegraphers). Precedent awards of this Division have recognized this sound principle. The attempt as here to declare a later factor of performance of such work on week days to be the establishment of a contractual right of its performance on Sunday represents a disregard of this principle as repeated in the many precedent awards of this Division.

(s) J. E. Kemp
(s) C. P. Dugan
(s) R. H. Allison
(s) C. C. Cook
(s) A. H. Jones