

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Western Lines)**

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

(a) Carrier violated the rules of the Clerks' Agreement when on May 26, 1946, it assigned or permitted employees outside the scope of the Clerks' Agreement to perform certain routine work on Sunday and holidays which is attached to and a part of Position No. 1304, Utility Clerk, Carlsbad, New Mexico; and,

(b) All such work shall be restored to the scope and operation of the Clerks' Agreement and reassigned to clerical employees in accordance with the rules thereof; and,

(c) L. R. Howe and/or all other occupants of Utility Clerk Position No. 1304, Carlsbad, New Mexico, shall be paid for eight (8) hours at the rate of time and one-half for each Sunday and holiday from May 26, 1946, until the work here involved occurring on Sundays and holidays is re-assigned to the clerical employees.

EMPLOYEES' STATEMENT OF FACTS: Prior to May 28, 1946, Utility Clerk Position No. 1304, Carlsbad, New Mexico, was assigned 1:00 P.M. to 10:00 P.M., with one hour meal period, six days per week, rest day Sunday, with a two hour call on Sundays and holidays, which call was within the spread of the week day assignment of this position. The assigned duties of this position consisted of:

Receiving and loading baggage on Train No. 26.

Checking potash trains.

Writing up abstracts of potash.

Make up waybills for billing.

Check livestock in cars.

Check trains.

clearly enunciated principle that excessive non-communications work that develops on a telegraph service position should be given to clerks but that if or when circumstances permit, the telegraph service employe may be required to resume the full performance of the duties of his position. (Awards Nos. 4492 and 3704 previously referred to.)

(Exhibits not reproduced.)

OPINION OF BOARD: We are called upon again to determine whether the Carrier violated the scope rule of the Clerks' Agreement by assigning certain work to telegraphers. There is sharp disagreement as to certain of the facts. From the record, the following appears:

1. For several years prior to the outbreak of World War II and before the clerk's position in question was established, the Carrier maintained at its Carlsbad, New Mexico, office a telegraphic service employe not covered by the Clerks' Agreement. He was a second trick operator who had assigned to him the following duties:

1. Check seals on outbound trains.
2. Pull inspection cards off potash loads.
3. Check and handle baggage.
4. Handle train orders, messages and other duties normal to communications service.

2. With the outbreak of World War II, a large demand developed for potash, a critical war material and one of the principal products shipped from Carlsbad. With this increase in demand for potash, the Carrier operated more trains with a resulting increase in train orders, messages and other related work. In 1942 an air base was established at Carlsbad, and this also resulted in a substantial increase in passenger traffic in and out of Carlsbad, increasing the work of the office. As a result of these developments, the position in question, No. 1304, Utility Clerk, was established on November 20, 1943, with a week day assignment from 1:00 P. M. to 10:00 P. M., with a one hour meal period, Sundays and holidays off. The assigned duties of Position No. 1304 were:

1. Check trains and pull inspection cards.
2. Make waybills.
3. Write abstracts.
4. Check livestock.
5. Handle wire tracers.
6. Prepare various daily and monthly reports and post various station records.

3. Shortly after Position No. 1304 was established, the workload on the second trick operator, and in particular the handling of the baggage for Train No. 26 scheduled to leave Carlsbad at 7:30 P. M., increased to the point where it was necessary that he be given some assistance. The Utility Clerk, Position No. 1304, thereupon was instructed to assist the operator with the following duties on week days:

1. Handle baggage.
2. Check seals on outbound trains.
3. Pull inspection cards on potash loads.

There is a difference of opinion between the Carrier and the Employees as to the duties of Position No. 1304 and the duties of the second trick operator. The original bulletin establishing Position No. 1304 made no reference to the duties of assisting the operator, which were added subsequently. It read as follows:

"Bids will be received in this office until 12 Noon, Nov. 1, on New Position 1304, Utility Clerk at Carlsbad, assigned hours 12:01 P. M. to 9:01 P. M., 1 hour for lunch, rate \$6.21, 6 days per week.

Duties require employe to handle billing of various shipments, check cars, handle wire tracers, daily and monthly reports, post various records, and such other duties as may be assigned by the Agent."

The Employees point out that the position was bulletined on six different occasions during the period from January 29, 1945, to April 26, 1946, as follows:

"POSITION 1304, UTILITY CLERK AT CARLSBAD, ASSIGNED HOURS 1:00 P. M. TO 10 P. M., 1 HOUR FOR LUNCH, RATE \$6.93 PER DAY, 6 DAYS PER WEEK REST DAY SUNDAY. DUTIES REQUIRE EMPLOYEE TO CHECK CARS IN YARDS, HANDLE BAGGAGE AND BAGGAGE REPORTS, AND VARIOUS CLERICAL WORK IN FREIGHT OFFICE."

It will be noted that the bulletins referred to by the Employees make specific reference to the handling of baggage. The Carrier explains the differences between the bulletins by stating that the individual who prepared the bulletin in 1945, knowing that the Utility Clerk had been handling baggage for Train No. 26, listed that as one of the duties of the position without realizing the importance of specifying that such work was in the nature of assistance to the operator, and that the error once made was perpetuated each time the vacancy occurred in the position by simply copying the bulletin advertising the previous vacancy as evidenced by the exact wording of those six bulletins.

The Carrier claims, and it is not disputed by the Employees, that the second trick operator continued to perform the same duties of handling baggage, checking seals on outbound trains and pulling inspection cards on potash loads throughout the period in question. He did so both before and after the Utility Clerk position was first established. The fact that the bulletin describing the position when it was first established does not include these duties tends to substantiate the Carrier's position that the duties were added later. The fact that the second trick operator continued to perform the duties tends to substantiate the Carrier's position that the Utility Clerk was assisting. It is also worth noting that the position as bulletined in 1945 and 1946, while mentioning the handling of baggage, makes no specific mention of the other two activities as to which the Utility Clerk was to assist the telegrapher—mainly checking seals on outbound trains and pulling inspection cards on potash loads.

On the record we are inclined to accept the Carrier's version of the facts that the Utility Clerk was assisting the second trick operator with the duties which he had always performed.

4. The second trick operator continued to perform the duties of handling baggage and checking seals on outbound trains, and pulling inspection cards on potash loads without assistance on Sundays and holidays until June 1944, when it became necessary to furnish him assistance on those days also. The primary purpose of calling the Utility Clerk on Sundays and holidays was to furnish the operator assistance in handling baggage for Train No. 26 scheduled to leave Carlsbad at 7:30 P. M. However, his services were utilized in so far as he had time to check seals and pull inspection cards during the remainder of his 2-hour call. The Carrier claims

that the incumbent of Position No. 1304 was called as needed from June 25, 1944, through May 25, 1946, to furnish the operator that required assistance.

The Employees claim that the Sundays and holiday assignments were regular assignments and that the Utility Clerk was called on Sundays and holidays except on four days when he was excused from reporting for work. An exhibit of the Carrier shows the Sundays and holidays on which the Utility Clerk worked for a 2-hour period. On almost 40% of the Sundays and holidays in question, he did not work. The position of the Carrier that the Utility Clerk was not subject to regular call is further substantiated by the bulletins for Position No. 1304. Both bulletins show that the position was a 6-day position and specifically state that the rest day is Sunday. This circumstance in addition to the actual transcript of the Carrier's record, which is not challenged by the Employees, leads this Board to the conclusion that the utility clerk was called as needed and did not have regular Sunday and holiday assignments.

5. With the termination of World War II, the closing of the air base, and decrease of business, the Carrier claims the second trick operator could handle the duties of his position without the assistance of the Utility Clerk on Sundays and holidays.

6. On May 25, 1946, the Carrier discontinued calling the Utility Clerk on Sundays and holidays and the claim in this case arises from this circumstance.

Another issue of fact grows out of the Employees' contention that the duties of Billing Clerk, Position No. 1300, prior to November 1, 1944, included the same Sunday duties which were performed by the occupant of Position No. 1304 on Sunday. Exhibit H in the record is a request for the establishment of the new clerical position at the Carlsbad station, indicating that another employee was necessary to handle waybilling, and to take care of the work in the afternoons as a result of billing being furnished by the potash company late in the day. Exhibit I in the record is a bulletin establishing the position which describes the position as follows:

"Employee occupying this position will be required to handle billing of potash, livestock and other car load shipments, make reports in connection with potash movement and perform such other duties as may be assigned by the Agent."

No reference is made in this bulletin to the handling of baggage. These exhibits and the facts contained therein tend to support the Carrier's position. The handling of baggage in relation to Train No. 26 was not performed by Billing Clerk No. 1300.

The claim in this case grows out of the employee's version of the facts that the position in question included as part of its duties for 6 days a week, a handling of the baggage of Train No. 26 and the other related activities. The Employees contend that since this work was regularly attached to the position for 6 days a week, that work belongs to the position on the seventh day. In view of our conclusion that the work in question was not attached to the position for 6 days a week but was throughout the period in question performed by the Utility Clerk as it had been prior to the creation of Position No. 1304, the principle urged by the Employees has no application here and must be disregarded.

Nor can the Board give any weight to the contentions growing out of the employee's assumptions that Position No. 1304 was subject to a regular Sunday call. As we understand the facts, this was not the case and the employee was called as needed.

In the case before us an employee outside of the Agreement performed certain duties without assistance until business increased substantially as a result of war conditions. Because of this increase in work he was given the assistance of a clerk coming within the Agreement when needed on Sundays

and holidays. With the decrease in business following the cessation of hostilities, the need for such assistance disappeared and the Sunday calls were discontinued. The employe continued to perform the work by himself on Sundays and holidays as he had before. Under these circumstances, we do not believe that the Carrier has an obligation to continue providing the same work to the clerical employe on Sundays and holidays.

In our opinion there is no merit to the employe's claim.

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 Employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of July, 1951.