

Award No. 5489
Docket No. CL-5422

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Western Lines)**

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

(a) Carrier violated the Clerks' Agreement at Pampa, Texas, when on February 9, 1946, it abolished Position No. 1448, 2nd Ticket Clerk, and removed the clerical and related work assigned thereto from the scope and operation of the agreement and required and permitted employees not covered by the agreement to perform said work; 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) Claim that C. H. Behrens and/or all other employees involved in or affected by said rules violations shall be compensated in full for all monetary losses resulting from Carrier's action retroactive to February 9, 1946.

EMPLOYEES' STATEMENT OF FACTS: As of February 8, 1946, and prior thereto, the following station force was maintained at Pampa, Texas:

Position Number	Title	Assigned Hours
1441	Agent-Telegrapher	8:00 A. M. to 5:00 P. M.
1442	Chief Clerk	8:00 A. M. to 5:00 P. M.
1443	Cashier	8:00 A. M. to 5:00 P. M.
1447	1st Ticket Clerk	6:00 A. M. to 3:00 P. M.
1448	2nd Ticket Clerk	3:00 P. M. to 12:00 Mid.
1449	Telegrapher	8:00 A. M. to 4:00 P. M.
1450	Telegrapher	4:00 P. M. to 12:00 Mid.
1451	Telegrapher	12:00 Mid. to 8:00 A. M.
1452	Yard Clerk	3:30 P. M. to 12:30 A. M.
1462	Warehouseman	8:00 A. M. to 5:00 P. M.

and from positions outside the scope of the Clerks' Agreement between this Brotherhood and the Missouri Pacific Railroad Company, said:

"Award 615 holds the scope rule is not all inclusive, that the right to exclusive performance of a class of work does not arise under all circumstances in the following language:

'The Board does not intend in this case in the slightest to impinge upon or limit the principles asserted by the Clerks but it is a mistaken concept that the source of the right to exclusive performance of the work covered by the agreement is to be found in either the scope or seniority rules; they may be searched in vain for a line even implying that they purport to accord to the employees represented the exclusive right to the performance of the work covered by the agreement. The Scope rules describe the class of work; they do not undertake to specify directly the inclusion of all of such classes of work; the Seniority rules merely control the disposition of the work that is available under the agreement.'

Our conclusion is supported by Awards 806, 809, 931, 1314, and 1593."

The scope rule of the Clerks' Agreement involved in Award 1694 is very similar to the one contained in the Agreement herein involved.

Article VIII, Section 1, is the Sunday and holiday rule which simply prescribes the manner in which employees will be compensated for work performed on such days and likewise lends no support to the Employees' claim.

Article XIII, Section 15, specifies the effective date of the Clerks' Agreement and provides a method for revising that Agreement. Carrier has made no change in the Clerks' Agreement nor has it altered the effective date thereof. This rule is therefore extraneous to the instant dispute.

In conclusion Carrier requests this Board to deny the Brotherhood's claim in the instant dispute for the reasons that:

1. The rules and Memorandum of Interpretation cited do not support the Brotherhood's claim.

2. Carrier's handling of the subject matter of this dispute was in complete harmony with this Board's well established and clearly enunciated principles governing the handling of such matters as evidenced by its many awards hereinbefore referred to.

3. The Brotherhood is requesting this Board to establish for it by Award, a monopoly over clerical work on the Carrier's Property that it has been unable to obtain by negotiation on the Property, or by Mediation.

(Exhibits not reproduced.)

OPINION OF BOARD: The work involved was performed by Telegraphers for approximately 24 years prior to September 5, 1942, when clerical position No. 1448 was established. Carrier states that this position, among other clerical positions, was created during the war to assist the telegrapher-clerks in handling an increased volume of work. With the termination of hostilities and abandonment of the Army Air School at Pampa, the ticket sales and related work decreased to a normal basis. The carrier states that the time had again come when the carrier did not need both an operator and a ticket clerk on the second track. Thereupon Ticket Clerk's Position

No. 1448, the subject of this claim, was abolished and the remaining work, with the exception of recording set-outs and pick-ups, was returned to the telegraph service position that had previously performed it.

The Organization points out that less than a month subsequent to the establishment of Ticket Clerk's Position No. 1448, the current Agreement between the parties, that of October 1, 1942, was executed. It contends that because the work in question on the date of said Agreement was assigned to and was being performed by a clerk, that thereafter so long as the duties remained to be performed, they were incident to that clerical position and subject to the Clerks' Agreement. In short, a monopoly right to the work is asserted because the Organization states the single exception provided by the following interpretation does not apply.

The Organization contends that the application of the "ebb and flow" principle, asserted by the Carrier and enunciated in numerous Awards of this Division, would be improper here because of the provisions of the Memorandum of Interpretation entered into by the parties concurrently with this Agreement of October 1, 1942, reading in part as follows:

"In the application of Articles I and II of Agreement to become effective October 1, 1942, it is understood and agreed that the work of Class 1, 2 and 3 employees referred to in said Agreement, when performed by officials and others not covered by the Agreement, incident to or as a consequence of their official or other positions, is not subject to the provisions of said Agreement." (Emphasis supplied).

However, this Division has lately examined the above quoted Interpretation in a dispute involving the same Organization and System, and ruled, in part, in Award 5199, that:

"This agreed to interpretation of the parties has the effect of applying to the work of Class 1, 2 and 3 employees under Articles I and II of their Agreement, effective October 1, 1942, the ebb and flow principle when such work is incident to or arises out of an official position, or a position not under the Clerks' Agreement, and has flowed out therefrom. * * * To take advantage of the interpretation agreed to Carrier must show that the work was incident to and arose from the Warehouse Foreman's work and that either he has always performed it or if not being returned to the position, that it had previously flowed out therefrom." (Emphasis supplied.)

In the interests of stability in labor relations, we feel compelled to conform to past decisions of this Board interpreting the same or identical clauses of the Agreement unless our past ruling be clearly erroneous. For a concise recital of the ebb and flow doctrine see Award 4477. Award 5196 cited by the Organization does not involve this principle.

It is not disputed that the listed work was performed by telegraphers for 24 years prior to the establishment of the clerical positions in 1942. This was the initial source of the work. Also in respect to the work of selling tickets, handling Pullman reservations, answering city telephone and furnishing travel information to public over telephone and at ticket window, handling ticket accounts, making daily record of sales, and balancing cash and transferring sheets, involved herein, we have expressly ruled in Award 4559 that while clerical in character, it is such work that is traditionally performed by telegraphers as an incident to their work. Similarly in respect to head end work, Award 4492. To offset precedent, tradition and past practice, a clear cut, definitive rule is required which the 1942 Agreement does not supply. The record reveals that the Organization made an effort to supply a rule in support of its present position through bargaining and mediation when negotiating the 1942 Agreement, but failed.

We cannot find support for its position under the Agreement or Interpretation as presently written.

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 the Agreement has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of September, 1951.