

Award No. 5605
Docket No. CL-5591

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—COAST LINES**

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

(a) Carrier violated the Clerk's Agreement at Prescott, Arizona, when it removed certain clerical and related work from the scope and operation of the agreement and required or 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 Clerk's Agreement and reassigned to clerical employees in accordance with the rules thereof; and,

(c) All employees involved in or affected by said rules violation shall be compensated in full for all monetary losses resulting from Carrier's action from February 20, 1949, until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: For years prior to February 20, 1949, all of the work involved in handling the crew board for Trainmen, Conductors and Switchmen at Prescott, Arizona, for the entire Fourth District, Albuquerque Division, including the handling of bid and assignment bulletins, vacation schedules, etc., was assigned to and performed by Mr. R. J. Oliver, Chief Clerk to Assistant Superintendent, an excepted position under the rules of the Clerk's Agreement. Effective February 20, 1949, the Assistant Superintendent and his office, together with his Chief Clerk, were moved from Prescott to Phoenix and thereafter that part of the work involving the handling of bid and assignment bulletins, vacation schedules, etc., for the Trainmen, Conductors and Switchmen on the Fourth District, continued to be handled by Chief Clerk, Mr. Oliver, from Phoenix, but all of the work in connection with maintaining the crew board for Trainmen, Conductors and Switchmen, together with approximately fifty per cent of the calling of such crews (those accessible by telephone), was, on and after February 20, 1949, assigned to the Telegraphers at Prescott who are employees of another craft and class.

POSITION OF EMPLOYEES: It is the position of the Employees that Carrier's action in assigning or permitting the Telegraphers at Prescott to perform the work here involved violates the following rules of the Clerk's Agreement bearing effective date October 1, 1942:

of the same classification) under the current Clerks' Agreement is proof that the Carrier recognized the disputed task as clerical work covered by the Clerks' Agreement, and which the Carrier here again asserts it did not do. The Chief Clerk position happened to be the one position to which it was expedient to assign a portion of the disputed work during daylight hours at the time the train dispatchers' office was discontinued in June, 1932, the chief clerk also being situated in proximity to the telegraph office.

While the Employees do not say, and the Carrier is unaware of what possible bearing the amount of time devoted by the Chief Clerk to the work here in dispute could have on the instant claim, the Carrier wishes to state that while the chief clerk may well on certain days have been employed a total of twelve hours as contended by the Employees, he did not, as might be inferred from the Employees' Statements, devote all of that time to the task of handling trainmen and yardmen crew boards. He also performed other duties assigned to his position unrelated to handling of the crew boards, and which duties were, of course, correspondingly heavier during busy seasons than during slack seasons.

The Carrier repeats that there is, for reasons stated hereinabove, not the slightest support under the Clerks' Agreement for the instant claim, and respectfully requests that the Board deny the claim in its entirety.

The Carrier is uninformed as to the arguments the Brotherhood will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in reply to the Brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the Brotherhood in this dispute.

All that is herein contained has been both known and available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to February 20, 1949, Carrier's Assistant Superintendent's office was located at Prescott, Arizona. Thereafter it was moved to Phoenix. The Chief Clerk to the Superintendent (an excepted position) moved with the change of office location. Prior to February 20, 1949, the work involved in connection with maintaining the crew board for Trainmen, Conductors and Switchmen, including the handling of bid and assignment bulletins, vacations, etc., was performed by the occupant of the Chief Clerk's position. Thereafter the Chief Clerk continued to handle the bid and assignment bulletins, vacation schedules, etc., from Phoenix, but the other work in connection with maintaining the crew board was assigned to telegraphers at Prescott. In addition, the Employees claim that about 50% of the work of calling crews at Prescott (those accessible by telephone) was also assigned to telegraphers at Prescott after February 20, 1949. This is denied by the Carrier.

In view of the conflict of fact with respect to the calling of the crews we shall first consider the asserted violation of the Agreement in Carrier's assignment of the work in connection with maintaining the crew board to the telegraphers and later deal with the work of calling crews.

It appears that prior to June 28, 1932, the work in connection with maintaining the crew board on the first shift at Prescott was handled by a chief dispatcher and by the second and third trick telegraphers from 4 p.m. to 8 a.m. daily. When the chief dispatcher's office at Prescott was discontinued, effective June 28, 1932, the work was taken over on the Chief Clerk's position and on the second and third shifts the telegraphers continued to perform the work. Effective February 20, 1949, the work in connection with maintaining the crew board was handled by the telegraphers on all three shifts.

We believe that the history outlined in the foregoing paragraph is significant, for it shows that the work in connection with maintaining the crew

board at Prescott for at least 17 years prior to the date of bringing of the claim has never been handled by employees within the scope of the Clerks' Agreement. Further and more important, it shows that said work has not been exclusively handled by clerks even on the excepted position. Such a factual situation will not admit of a conclusion that the work in connection with maintaining the crew board was work exclusively within the scope of the Clerks' Agreement, since custom, tradition and practice are the decisive factors in determining what work accrues to the classes of employees listed in the Scope Rule of a given agreement where the work covered thereby is not described. (See Award 5404 and awards therein cited.)

With respect to the work of calling crews a different situation is presented. Carrier contends that while its telegraphers have occasionally called crews in the past, that was only done by telephone, and even such handling was discontinued not long after presentation of the instant claim. The Employees are in disagreement with the latter part of this statement of Carrier. It is clear from Carrier's own exhibit that the work of calling of crews at Prescott is not, and never has been, the assigned duty of Telegraph Operators. The current agreement contains the classification of "train and engine crew callers." The work of calling train and engine crews at Prescott, according to bulletins introduced as exhibits by Carrier, is assigned to clerical positions at Prescott. It is apparent in these circumstances, under the principles established by Awards 3506, 4812 and 4997 the work may not be properly assigned to Telegraphers. If in fact such work has been assigned to or required of the Telegraphers, there has been a violation of the Agreement. While we cannot resolve the conflict of fact with respect to the handling of this work by the Telegraphers, it should be simple enough for the parties to determine by their records since February 20, 1949, if and when such work has been so handled and if it is found that such work has been assigned to or required of the Telegrapher, agree on appropriate compensation for the employees affected. That part of the claim will therefore be remanded to the property for that purpose.

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 by assigning work in connection with maintaining the crew board at Prescott, Arizona, to the Telegrapher position; that with respect to the work of crew calling, the claim should be remanded as indicated in Opinion.

AWARD

Claim remanded as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 14th day of January, 1952.