

Award No. 5658

Docket No. CL-5614

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

**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 current Clerks' Agreement in failing to make an assignment and post an assignment bulletin on "87" Clerk Position No. 68 at Amarillo, Texas, within six (6) days following the close of Superintendent J. N. Landreth's Bulletin S-32 on September 7, 1947; and,

(b) Carrier violated the current Clerks' Agreement by assigning or permitting employees not covered by the Clerks' Agreement to perform the routine clerical work assigned to Position No. 68, titled "87" Clerk; and,

(c) Mr. W. L. Sloan be paid six (6) hours per day at the rate of time and one-half his position, rate \$10.88 (now \$13.62) per day, in addition to what he was paid from September 22, 1947, until the violation is corrected and the work here involved returned to the scope and operation of the agreement rules.

STATEMENT OF FACTS: Schedule clerical Position No. 68, titled "87" Clerk, was last established in the Chief Dispatcher's Office at Amarillo, Texas, by bulletin posted in September, 1942. To this schedule clerical position was assigned the routine duties involved in compiling and typing the "87" report. For some time prior to that time, the work of compiling the "87" report was performed exclusively by Night Chief Dispatcher J. W. Horn and the typing of the compiled report was assigned to and performed by Steno-Clerk Ed Ward. Thus, the principal and preponderating duties of Position No. 68 were, as the title implies, to compile and render the "87" report and related work and the various incumbents of this position continued to perform all of these duties from the time position was last established until September, 1947.

On September 2, 1947, the incumbent of this position, Mr. W. B. Phillips, bid for and was assigned to a temporary vacancy on position of Statement Clerk. Thereupon, the Carrier's Superintendent at Amarillo issued his Bulletin S-32 advertising the temporary vacancy thus created on the "87" Clerk position, reading as follows:

action was in complete harmony with the firmly established principle of this Board as enunciated in its Awards 5199, 4998, 4893, 4559, 4492, 4477, 4355 and a great many others, reference to which is to be found in those Awards. Carrier therefore respectfully requests this Board to deny the Employees' claim in the instant dispute, for the reasons herein stated.

The Carrier is uninformed as to the arguments the Brotherhood will advance in its ex-parte submission and therefore 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 and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The incumbent of a regular "87" Clerk position in the Chief Dispatcher's Office bid in a temporary vacancy on a Statement Clerk position on September 2, 1947. The same day the Carrier advertised the temporary vacancy on the "87" Clerk position and the incumbent held the position pending advertisement and assignment but he took sick leave September 10 through 13 and went on vacation September 14 through 21.

When the incumbent of the Clerk "87" position went on vacation, the Carrier assigned the duties and responsibilities of the position to the Assistant Chief Dispatcher (formerly Night Chief Dispatcher) and trick dispatchers, with the exception of one to one and one-half hour's work making tally sheet which was assigned to another Schedule clerical employee and about 55 minute's work which was eliminated. The claim in Award 5657 covers this vacation period.

When the incumbent of the "87" Clerk position reported for duty after vacation on September 22, 1947, he was instructed to assume the Statement Clerk position which he had bid in September 2, 1947.

Meanwhile the bulletin advertising temporary vacancy on the "87" Clerk position had expired September 9, 1947 without a bid being received. There was no off-in-force reduction employee to recall for this vacancy. When the incumbent reported sick, the work of the position was performed by the dispatching force and they have been performing it ever since by reason of the fact that the Carrier abolished the "87" Clerk position effective September 22, 1947. The claim in this docket covers the period from September 22 until the violation is corrected.

The principal work of the position revolves around preparation of the "87 Report" which is an operational report covering daily train movements. According to the Carrier, when the dispatching force is responsible for the preparation of the "87 Report", each trick dispatcher records the information for that report incident to and at the time it is put on the train sheets; and thereafter the preparation of the report consists of typing, in proper order, the information so recorded by the trick dispatcher.

The work in question was originally performed by dispatchers. The "87" Clerk position was first established in June 1926 to relieve and assist the dispatching forces in a heavy increase in train operation. When train operation fell off, the "87" Clerk position was abolished in June 1930 and the work reverted to the dispatching forces. Again when train operation increased, the "87" Clerk position was reestablished on October 3, 1942 which was two days after the first Agreement between the parties became effective.

The Carrier now maintains that conditions in September 1947 had again become such that the dispatching force could again perform all of the duties which they had previously performed prior to 1926 and from 1930 to 1942.

There is conflict in the record whether the work ebbed and flowed to and from the "87" Clerk and the Night Chief Dispatcher (an excepted position) or to and from the "87" Clerk and the dispatching forces. We resolve this conflict in favor of the Carrier and find that between 1932 and 1940 there was neither a Night Chief Dispatcher position (except for short periods of a few months each) nor an "87" Clerk position and that when neither of these positions was working, the work in question was performed by trick dispatchers as above described.

The parties attempted to settle the claim in Award 5657 and offers of compromise were exchanged but no agreement was reached. These compromise offers appear in this record but on well settled principles we disregard the disclosure (Awards 1395, 2283, 2863, 3345 and 5212).

FIRST. The history of the work in question shows that it was indigenous to the dispatching forces who performed it either through an excepted position assisted by a steno-clerk or through trick dispatcher positions. The history also shows consistent pursuit by the Carrier of the "ebb and flow" principle in assigning the work during cyclical changes in the volume of business. Such being the case, the claim should be denied (Awards 1314, 4559, 5199 and 5387).

SECOND. Award 1314 is not contrary to the conclusion here reached. There the Carrier "ebbed" the work back to two excepted positions when only one had performed it before it flowed out, which was an indication that the work had in fact not ebbed at all and was simply being redistributed in unabated volume in violation of the agreement (compare Award 3191). In the case before us it is established that the work ebbed whence it flowed.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of February, 1951.