

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

David R. Douglass, Referee

PARTIES TO DISPUTE:

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

**CCC & ST. L. RY. (The New York Central R.R. Co., Lessee)
P. & E. RY. (Operated by the New York Central R.R. Co.)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When on or about March 16, 1950, Management, by unilateral action, removed work normally and traditionally assigned to and performed by clerical workers employed in Carrier's freight station at Danville, Illinois and assigned said clerical work to and to be performed by an employee (Ticket Agent) of the Carrier, a person (position) without the Scope Rule of our Agreement with the Carrier effective July 22, 1922 that governs the hours of service and working conditions of the clerical workers therein specified.

(2) A. That Miss Ara L. Courson, furloughed Clerk, be compensated for wage losses sustained, namely, eight (8) hours pay daily, rate \$11.788 per day, on all dates between March 16, 1950 and May 31, 1950 (omitting the intervening Saturdays, Sundays and Mondays of each week during this period) that Claimant, Miss Courson, was denied available work opportunities and consequent wage loss by Carrier's violative action as set forth in Section 1 hereof, and

NOTE: Saturdays and Sundays omitted account Telegrapher performing no work at the Freight Station.

Monday of each week omitted account Miss Courson employed as Relief Clerk on that day of the week.

B. That on such other dates, namely, Monday of each week during period March 16, 1950 and May 31, 1950 and other dates, if there be any, that records may disclose Miss Courson not having suffered wage loss and also for all dates subsequent to May 31, 1950, continuing on to date work normally and traditionally handled by clerical workers is restored to said workers, an allowance of four hours and twenty (4:20") per day at overtime rate be paid P. G. Tanquary, Clerk, Rate of Pay \$11.788.

EMPLOYEES' STATEMENT OF FACTS: At Danville, Illinois, the Carrier maintained separate and distinct Passenger and Freight Stations. They are located approximately three (3) blocks apart.

A limitation of the principle or theory of "separate locations" is evidenced by Third Division Award 4677 where the Telegraphers challenged the right of the MK&T schedule agent at Wichita Falls to exercise jurisdiction not only at the main station but also at additional oil loading facilities set up within station limits with a separate clerical and telegrapher force. The claim that an agency should be created at Morfa, where the additional facilities were located, was denied.

In the present dispute at Danville, there can be no question as to proximity from January 4, 1951, the date the two facilities were consolidated.

As to the measure of penalty, if any be due, Award 5196 evidences that the employees cannot consistently claim more than the amount of time Schaefer devoted to freight clerical work.

The carrier's point with reference to delayed handling of the claim is supported by Awards 4941 and 4964. The question of what is unreasonable delay depends upon the facts in each instance. The running claim for four hours twenty minutes at overtime rate, in favor of a man whose daily rate is \$11.788, amounts to more than \$200.00 a month.

Such delay deprives the carrier of effective opportunity to make other plans in the event it is wrong. This exception is particularly appropriate in view of the fact that when the carrier combined the passenger and freight facilities on January 4, 1951, it removed any question of proximity.

SUMMATION: Of the work against which complaint is directed, Ticket Agent Schaefer is not doing anything except completing a report known as the "transit record." This consumes about one hour of his time daily.

He additionally handles wire reports or messages for the freight office, to which no exception has been or could be taken.

There is nothing to say with reference to the broad contention of the Brotherhood that freight office clerks should be relieved of telegrapher duties, because the freight office clerks do not perform any telegrapher work. It is not telegrapher work if a clerk telephones a message or report locally to a telegrapher for inter-city transmission. (See Third Division Award 700.)

No logical basis has been offered for allowing Miss Courson one day's pay for each day she did not work within the period for which she claims, nor any authority by schedule rule.

No support of such character has been offered for Mr. Tanquary's claim, nor was his claim filed or handled on the property except as a vague reference to claims of other employees.

The work performed by Schaefer is not in violation of rules or practice, and the carrier's position is supported by the awards of the Third Division.

If the Employees claim any violation after the consolidation of facilities on January 4, 1951, the carrier has been placed at a disadvantage by the Brotherhood's delayed handling, and that date should terminate the claim under any condition.

The employees are fully conversant with the position of the carrier.

(Exhibits not reproduced).

OPINION OF BOARD: The passenger and freight stations at Danville, Illinois, were located approximately 1,600 feet apart. The passenger station was closed on January 4, 1951 and since that date the former freight

station has been used both as a freight station and passenger depot. This action had been planned for sometime prior to March 16, 1950. The Organization was aware of such a contemplated change.

Commencing March 16, 1950, the Ticket Agent, whose entire assignment prior to this date had been at the passenger station, was given a new assignment which required him to be at the freight office from 8:00 A.M. to 8:50 A.M., the ticket office (passenger station) from 8:50 A.M. until Noon, back at the freight office from 1:00 P.M. to 4:30 P.M. and then at the ticket office from 4:30 P.M. until 5:00 P.M.

The claim here is, essentially, that a furloughed employe, Miss Courson, was deprived of work to which she was entitled under the Clerks' agreement because of the ticket agent performing an excess of 4 hours clerical work at the freight office during the days of his split assignment. She seeks pay for those days on which she suffered a pay loss because of the Carrier's action.

Another portion of the claim is for an allowance of four hours and twenty minutes per day at overtime rates for Clerk Tanquary for all dates subsequent to May 31, 1950 that the ticket agent continued to perform the alleged clerical duties. The foundation or theory of this portion of the claim being that such work, had it not been performed by the ticket agent, would have resulted in overtime to which a clerk would have been entitled.

We believe the claim to be in proper form. The Carrier was properly given notice as to the extent of the claim. The individual naming of claimants is not necessary if such are sufficiently described, as was here done during the progressing of the claim. The time between the last handling on the property and the time the claim was brought to this Board is not of such duration as to bar the claim from our consideration.

First, we will take up the Courson claim. The Carrier contends that unrelated clerical work performed by the ticket agent at the freight station prior to January 4, 1951 did not exceed an hour each day. The evidence fails to establish the Organization's contention that an excess of four hours per day was spent by the ticket agent in the performance of work which was clerical work and to which the clerks had a right. The record shows that the ticket agent was assigned to perform work at the freight station for a total of four hours and twenty minutes daily during which time he performed several of his duties in connection with his work as ticket agent—duties which he had previously performed at the passenger station.

As to the portion of the claim regarding Claimant Tanquary. The record discloses that the ticket agent did perform some clerical work which was unrelated, both by the nature of the work and by distance from place of employment duties, between March 16, 1950 and January 4, 1951. The passenger station was closed on January 4, 1951 and the passenger depot was established within the same building that was formerly occupied only by the freight office employes.

We are of the opinion that Claimant Tanquary is entitled to pay at the pro rata rate for all time spent by the ticket agent in the performance of clerical work not related to his position as ticket agent. This means only such clerical work as was improperly performed by the ticket agent at the freight office prior to the time the passenger station was closed on January 4, 1951.

While ordinarily a telegrapher may fill out his day with clerical duties, this situation does not fall into that line of reasoning. Here, the distance between the two offices was about 1,600 feet. We believe that such a distance takes the work out of the proximity of his usual place for performing work of his assignment.

The amount of time spent by the ticket agent in performance of work belonging to the clerks during the period prior to January 4, 1951 is not determinable by this Board from the evidence presented to us. It is our best judgment that the Tanquary claim for dates between March 16, 1950 and January 4, 1951 should be remanded back to the property for settlement in line with this opinion. In other words, Tanquary is entitled to one hour at pro rata rate for each hour that the ticket agent performed unrelated clerical work at the freight station between March 16, 1950 and January 4, 1951.

We believe that there is no basis for claim after January 4, 1951, our opinion being that the two offices were in close proximity (the same building). The ticket agent was also a part of the general station force, reporting to the supervisory agent.

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 Carrier violated the Agreement.

AWARD

Claim, part (1) is sustained.

Claim, part (2) A is denied.

Claim, part (2) B is remanded with instructions as per the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1952.