

Award No. 6269

Docket No. CL-6389

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) Carrier violated and continues to violate the Rules of the Clerks' Agreement at Deming, New Mexico, when it removed the clerical work of making freight abstracts and freight bills, filing tariffs and revising way-bills from the scope and operation of the Clerks' Agreement and assigned such work to the second and third trick Telegraphers, employees not covered by the aforesaid Agreement.

(b) That Cashier H. R. Darling and/or his successors be compensated under the provisions of the Call Rule, two and one-half (2½) hours at the rate of time and one-half of his assigned position from October 28, 1949, on which date the Division Chairman formally presented the dispute and claim to the Division Superintendent, and until March 1, 1951, when Carrier restored the work of making freight abstracts to the scope of the Clerks' Agreement, and on a call basis thereafter until all of the work as set forth in item (a), Statement of Claim, is restored to the scope and operation of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: I. There is in evidence an Agreement between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its Employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees bearing effective date of October 1, 1940, which Agreement (hereinafter referred to as the Agreement) was in effect on the dates involved in the instant claim. A copy of the Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

II. On July 1, 1925, there existed at Deming, New Mexico, a station situation on Carrier's Rio Grande Division, positions with assigned hours as set forth in Carrier's Circular No. 2 dated June 29, 1925, as follows:

Award No. 4208:

"Of significance in this case is the fact that this situation was existent at Mina Coal Dock for thirty-six years before claim was made. During that time we find that nine agreements have been negotiated between the parties hereto and each of those agreements contained a list of positions covered thereby. * * * we find a practice existent for thirty-six years prior to any complaint by the Employees. If they did not know what was going on at Mina in 1910 certainly they must be presumed to have had knowledge of the situation by 1919 and since that time six agreements were negotiated with the Carrier."

VI**CONCLUSION**

Carrier requests that this Division deny the claim in this docket in its entirety.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute. (Exhibits not reproduced.)

OPINION OF BOARD: Claim is made on behalf of H. R. Darling and/or his successors, by the Clerks' Organization, for an alleged violation by Carrier of Rule 1, The Scope Rule, and also Rules 20 and 21, Overtime and Calls rules, of the current Agreement between the parties, effective October 1, 1940. Such violation being brought about by action of the Carrier in taking away of clerical work requiring the making of freight abstracts and freight bills, filing tariffs and revising waybills, from the Clerks' Organization and assigning the clerical work to Telegrapher-Clerks, not covered by the current Agreement, all being in violation of the Scope Rule. It is further claimed that the employe Darling and his successors should be compensated at the rate of time and one-half under Rules 20 and 21, for a period of 2½ hours daily, the time required to perform the work given second and third trick Telegrapher-Clerks.

Carrier denies the assignment of such clerical work to members of another craft was a violation of the provisions of the Scope Rule of the current Agreement, and the record clearly shows that prior to the inception date of the current Agreement, and as far back as 1923, that Telegrapher-Clerks were performing station clerical work to the extent of filling out their daily assignment, where such work did not interfere with their telegraphic duties. This procedure remained in effect, by action of the Carrier until March 1, 1951, when the work of making freight abstracts was assigned to the Clerks' Organization, but the remaining duties have remained and are performed by Telegrapher-Clerks.

The Scope Rule in the Agreement before us is general in character, and in no way defines the work to be performed, nor does it allow the Organization the exclusive right to all clerical work to be performed.

This Board has held in numerous cases that a Telegrapher-Clerk may perform clerical type work in addition to his regular assigned telegraphic duties, which may be required by the Carrier, to such an extent as to fill out his telegraphic assignment. This principle has been laid down by this Board in many cases and we reaffirm the holdings as set out in the following Awards—615, 3989, 4288, 4355, 4477 and 4559.

It is therefore the opinion of the Board that Carrier has in no way violated the provisions of the current Agreement. There being no violation of the Scope Rule, it follows there was no violation of other rules as alleged by the Organization.

Having disposed of the claim as stated above, it is not necessary to consider the contention of Carrier on the question of notice to the third party, the Telegraphers' Organization, as neither the Organization nor its members are in any way adversely affected by the holding of this Board as respecting the claim before us.

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 did not violate the Agreement as alleged.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1953.