

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

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 when it required and/or permitted Relief Agent Kuntz, an employe not covered by the Clerks' Agreement, to perform clerical work at Clearfield, Pa., subsequent to the abolition of a Station Clerk's position (#73-1-353); and

(b) That as a penalty, former incumbent Carl B. Peters of the abolished position of Station Clerk at Clearfield, Pa., be paid one day's pay at the rate of \$10.12 for each day on May 2, 3 and 4, 1949 and subsequent thereto for each violation under similar circumstances at the same location until the condition is corrected.

Note: That a joint check of Carrier's records be made to ascertain those dates subsequent to May 4, 1949, and the extent that the Carrier violated the Agreement at Clearfield, Pa., under similar circumstances.

EMPLOYEES' STATEMENT OF FACTS: On December 29, 1948, Carrier abolished the only existing clerical position at Clearfield, Pa., and reassigned the remaining duties to the Agent under the provisions of Rule 1(c)2. The abolished position was identified as Station Clerk #73-1-353. At the time the position was abolished, there was less than 4 hours work attached to the position, which consisted of the following: checking yard and sidings, making out concealed and damaged reports, billing and rating carload and less than carload shipments, handling receiving and delivery of freight in the freight house.

At the time the position was abolished, Carrier properly reassigned the work attached thereto to the Agent, as there was less than 4 hours work per day remaining to be performed. However, the clerical and related work subsequently increased to such an extent that it was impossible for the Agent to perform the work during his regular tour of duty without assistance. Carrier therefore called Relief Agent-Telegrapher Kuntz, an employe not covered by the scope of the Clerks' Agreement, on May 2, 3 and 4, 1949, to assist the Agent in catching up on the clerical work as follows:

abolished and only the agent remains, the relief agent may properly be used at intermittent intervals and at the option of the Carrier to assist the full-time agent in all or any of his duties if the Carrier deems it necessary so to do. The relief agent's position comes within the scope of the Telegraphers' Agreement, not the Clerks' Agreement; and the only work the relief agent is required to perform is that work incident to and directly attached to the position of agent, a position which, quite obviously, also comes under the Telegraphers' contract. This Division, the Carrier maintains, has no right or authority to make any order directly, or by indirection issue any verdict the net effect of which would be, to change the rules and practices arising under the Telegraphers' Agreement.

In view of all that is contained hereinabove the Carrier submits there is no merit to the instant claim and respectfully requests this Division to decline it accordingly.

In accordance with the requirements contained in this Division's Circular No. 1 issued October 10, 1934 the Carrier submits that all data in support of the Carrier's position in this case has been presented to or is known by the other party to this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends a violation of the Agreement when on May 2, 3 and 4, 1949, Carrier used a Relief Agent-Telegrapher to assist the Agent at Clearfield, Pennsylvania, in clearing up an accumulation of clerical work. On December 29, 1948, Carrier abolished the only existing clerical position at Clearfield and reassigned the remaining work to the Agent under the provisions of Rule 1 (c) 2. At the time of abolishment less than four (4) hours of work attached to the position. Rule 1 (b) of the applicable Agreement is cited, which provides:

"(b) When the assignment of clerical work in an office, station, warehouse, freight house, store house, or yard, occurring within a spread of ten (10) hours from the time such clerical work begins, is made to more than one (1) employe not classified as a clerk, the total time devoted to such work by all such employes at a facility specified herein shall not exceed four (4) hours per day."

Respondent Carrier states that the occupant of the Station Clerk's position was Carl B. Peters, Claimant, and he exercised his displacement to position of Foreman at the Station, Indiana, Pa. That all work at the Clearfield Station was that of the Agent and by reason of a back log on scale weight reports covering unusually heavy shipments of coal, a Relief-Agent went to Clearfield to help the Agent become current in his work which was proper, and did not violate the Agreement.

Another matter is raised on behalf of Respondent Carrier, that of notice being given by this Board to the Relief Agent and to his representative, the Order of Railroad Telegraphers, in order to afford them the right to appear and be heard.

This question was considered in Awards 6527, 6528, and 6529 and is disposed of on the Findings made therein for the same reasons.

We do not feel that it is necessary to go into extended detail on the evidence and argument in support thereof in view of the Findings made in Awards 6527, 6528 and 6529. However, in this claim a penalty is requested and in this it differs from the Awards last cited.

We think Claim (a) should be sustained. In Claim (b) we find a technical violation of the Agreement and the same is sustained to that extent but denied as to the penalty payment.

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 Claim (a) is sustained; Claim (b) sustained on a technical violation; denied as to penalty payment.

AWARD

Claim (a) is sustained; Claim (b) sustained on a technical violation; denied as to penalty payment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.