

Award No. 6600

Docket No. CL-6312

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) Carrier violated the current Clerks' Agreement when, during the period from September 1, 1949, to June 15, 1950, it removed, on the rest days and holidays of the Cashier at Gainesville, Texas, the work of delivering of employees' paychecks on such days from the scope and operation of the Clerks' Agreement by assigning or permitting the supervisory Agent at Gainesville to perform such work on such days; and,

(b) Carrier further violated the current Clerks' Agreement when on or about June 16, 1950, it entirely removed from the Cashier's position and the scope and operation of the Clerks' Agreement all of the work of delivering employees' paychecks at Gainesville by assigning or permitting the Ticket Agent, an employee covered by the Telegraphers' Agreement, to perform all of such work; and,

(c) H. L. Gibson and/or other occupants of Cashier Position No. 227, Gainesville, Texas, shall be paid three (3) hours at overtime rate of Position No. 227 for each rest day or holiday during period September 1, 1949, to June 15, 1950, that supervisory Agent performed such work; and,

(d) H. L. Gibson and/or other occupants of Cashier Position No. 227, Gainesville, Texas, shall be paid five (5) hours at overtime rate of Position No. 227 for each pay period that Ticket Agent performs the work of delivering paychecks from June 16, 1950, until the violation is corrected and the work returned to the scope and operation of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: For more than thirty (30) years prior to September 1, 1949, Cashier Position No. 227 at Gainesville, Texas, was assigned six days per week, Monday through Saturday, rest day Sunday, and during all of this period the assigned duties of the occupant of this position included the delivery of all employee paychecks at that point. Moreover, during all of this period when a Sunday or Holiday fell on the second or third day after payday, the Cashier was called out on Sunday (his rest day), or

tion to develop the claims of its employees, the Third Division has, in disputes involving alleged improper transfer of work, a circumstance not involved in the instant dispute, also held that the claimant is only entitled to compensation for the time the employee not entitled to the work, actually devoted thereto. See Awards 5196, 5431, 5572 and others.

The Board has also consistently denied claims such as that advanced by the Employees in the instant dispute, for the payment of time and one-half for time not worked, on the premise that the alleged right to work is not the equivalent of work performed under the overtime and call rules of an agreement. See Awards 3193, 3504, 4934, 5078, 5195, 5200, 5236, 5580 and many others.

In conclusion, the Carrier respectfully asserts that:

- (1) The delivery of paychecks to the Carrier's employees has never been the exclusive work of either clerical employees or any other class of employees on the respondent Carrier's property.
- (2) The delivery of paychecks has never been the exclusive work of either the Cashier or any other clerical employee at Gainesville.
- (3) The delivery of paychecks at Gainesville has historically been one of the primary duties and responsibilities of the Supervisory Agent at that location.
- (4) Prior to the initiation of the handling complained of in the instant dispute, the Cashier, the same as the excepted Chief Clerk, had simply assisted the Supervisory Agent in the delivery of paychecks and the Cashier's assistance did not serve to give him a monopoly or perpetual right to the continuous performance of such work.
- (5) The complained of delivery of paychecks by the Supervisory Agent on a Sunday or holiday, during the period September 1, 1949 to May 1, 1950 and by the Ticket Agent subsequent to May 1, 1950, was not violative of any rule of the current Clerks' Agreement.

The Employees' claim is entirely without merit or support under the agreement rules and should be denied in its entirety.

The Carrier is uninformed with regard to the arguments the employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude is necessary in reply to the Employees' ex parte submission and any subsequent oral arguments and briefs they may present in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves an alleged violation of the Clerks' Agreement. It appears that for a period of over thirty years prior to September 1, 1949, the Cashier at Gainesville, Texas, handled as one of his regularly assigned duties the delivery of paychecks which were received by the employees at the Freight Station. During this period the Cashier was assigned to work Monday through Saturday with rest day on Sunday. When a Sunday or holiday fell on the second or third day after pay day, the Cashier was called out on that Sunday or holiday and given a call of three hours at overtime rates to deliver paychecks to employees seeking same on such days. With the advent of the 40-hour week, September 1, 1949, this Cashier position was continued as a 6-day position. At this time the Cashier was assigned Monday through Friday, with rest days of Saturday and Sunday. At this time

the delivery of checks on Saturday, Sunday and holidays was removed from the Cashier position and given to the Supervisory Agent, and he performed such services until May 1, 1950. Effective on this latter date this work was turned over to the Ticket Agent, an employee covered by the Telegraphers' Agreement, a facility located a distance of approximately 718 feet from the Freight Station where the work had been performed prior to May 1, 1950.

It is the position of the employees that work which had been performed by a clerk may not be removed from the Clerks' Agreement and assigned to an employee under the Telegraphers' Agreement at a point removed from the clerical position.

It is the position of the Carrier that there is nothing to be found in the basic agreement or the 40-hour work week agreement which gives to the occupant of the position of Cashier, or to any other clerical position at Gainesville, an exclusive right to the delivery of paychecks.

It appears that the duties of position No. 227 were listed in Bid Bulletin No. 16 under date of September 13, 1935, as follows: "Duties of this position consist of Cashier work, collections, making various statements and reports, and such other work as may be assigned by the agent."

It also appears that paychecks for employees are mailed by the Treasury Department of the Carrier to the Supervisory Agent, and such Agent uses certain employees of his staff to make delivery of the checks to the employees. It is a commonly accepted rule that when certain work is performed by an employee on all of his work days, it likewise belongs to him or his position on rest days, except when performed by a relief or other employee entitled to it under the agreement. In Award 5623 it was said:

"The principle applicable to a determination of this claim has been set forth in numerous awards on this Board. While it may be true as contended by Carrier that at other points on the system this type of work is performed by telegraphers as part of their regular assignments, the fact remains that at this location such work had increased to such an extent that it became necessary to assign a clerk. Under such circumstances when clerical work has been assigned exclusively to the clerical position during the week that same work may not be assigned to employees not under the Clerks' Agreement on the assigned off days of the clerical position. (See Awards 4477, 2052, 3425, 3858, 4832.) The Forty-Hour Work Agreement did not change the application of the principle. It follows that the Carrier's action was violative of the Agreement and the claim must be sustained."

In the case at bar the Cashier was assigned the duty of delivering paychecks at the Freight Station to certain employees, and this service continued for a period of more than thirty years, during which time three clerical agreements were negotiated without any change being made in the duty performed by the Cashier. Under such circumstances it may be said that the Carrier has accepted and acknowledged these duties as belonging to the Cashier. The Carrier is now estopped from claiming otherwise.

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 claims will be sustained.

AWARD

Claims sustained as provided for in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of May, 1954.