

Award No. 6657
Docket No. CL-6538

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Hubert Wyckoff—Referee

PARTIES TO DISPUTE:

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

ST. JOSEPH UNION DEPOT COMPANY

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

(a) Carrier violated the scope and operation rules of the Clerks' Agreement when on July 13, 14, and 22, 1951, it assigned or permitted parties outside the scope of the Clerks' Agreement to perform certain clerical work normally assigned to and performed by the Ticket Clerks; and,

(b) The following employees shall be paid at the rate of time and one-half of their respective rate as indicated below:

Name	Date	Hours
F. R. Farris	July 13, 1951	2' 30"
B. E. Miller	July 13, 1951	8' 30"
V. D. Griggs	July 13, 1951	8' 30"
H. A. Wilson	July 14, 1951	6' 30"
B. E. Miller	July 14, 1951	8' 30"
V. D. Griggs	July 14, 1951	6' 30"
W. C. Griggs	July 22, 1951	9' 00"

EMPLOYEES' STATEMENT OF FACTS: On July 13, 14 and 22, 1951, the following parties performed routine clerical work at the St. Joseph Union Depot Company ticket office during the hours indicated:

Friday, July 13, 1951

Mr. S. T. Abbott —Passenger Agt.—CB & Q. Ry. Co.—3:30 pm - 12:00 pm
Mr. G. F. Bridges —General Agent —St. J.U.D. Co. —3:30 pm - 12:00 pm
Miss M. Moorman—Clerk —CB & Q. Ry. Co.—7:15 pm - 9:45 pm

be no apparent reason for limiting the claim to only between 3:30 P.M. and Midnight, nor is there anything to show that the General Agent performed ticket clerk duties at any time during these hours.

On Saturday, July 14th, V. D. Griggs claims 6 hours 30 minutes' pay for the work performed by Mr. Bridges between 3:30 P.M. and 10:00 P.M. B. E. Miller wishes to be paid 8 hours 30 minutes for the work performed by Mr. Abbott between 3:30 P.M. and Midnight, but B. E. Miller's regular hours extended until 4:30 P.M. on Saturday. In other words, he was at work at the ticket window during one of the hours he claims Mr. Abbott performed ticket clerk's work. Even if this were true he could not collect for the time between 3:30 P.M. and 4:30 P.M., but only an off-duty ticket clerk would have cause for complaint. On July 14th, H. A. Wilson also claims 6 hours 30 minutes' pay for the work performed by Miss Moorman between 8:00 A.M. and 2:30 P.M., but he cannot even begin to prove she was doing ticket clerk's work at any time during those hours.

The claim for Sunday, July 22, 1951 is made by W. C. Griggs, whose regular duties are those of a truckman, who is not qualified as a ticket seller. He claims that Mr. Abbott and Mr. Bridges each worked from 9:00 A.M. to 1:30 P.M. on the duties of a ticket clerk, so he should be paid 9 hours. The evidence shows that all they did was order commissary supplies for dining cars, which has nothing whatsoever to do with the work of a ticket clerk. Furthermore, there is no reason shown why any Sunday ticket clerk work should fall to claimant W. C. Griggs, a truckman.

Before any award sustaining this claim could be rendered, it would seem some reason should be given why each claimant thinks he personally is entitled to these outrageous penalty payments. There is no rule providing for such payments, hence we cannot look to the agreement to determine who should be the beneficiaries of this booty demanded by the Petitioner. It certainly cannot be passed around indiscriminately to those who get their claim in first.

The request for time and one-half payments merely shows the Organization has asked for the extreme penalty in the hope of obtaining some benefit without claimants doing any work. The Organization is very well aware of the rule, very often expressed by this Division, that only pro-rata payments will be allowed when no actual work is performed, even though it would have been paid for at time and one-half had it been performed. See Awards 2346, 2695, 2823, 3049, 3193, 3504, 4244, 4345 and many others.

The Carrier sums up its case by reasserting that the evidence clearly points to a finding that no work which can properly be described as the exclusive duties of ticket clerks employed by the St. Joseph Union Depot was performed by the parties named by the Organization on the dates claimed. A finding of fact must be made in accord with the position of Management, and an award denying this claim in its entirety must follow.

The Carrier affirmatively states that all data herein and herewith submitted has been previously submitted to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based on the asserted performance of routine clerical work at the Ticket Office, St. Joseph Union Depot, by three persons admittedly outside the scope of the Agreement.

July 13, 1951, a disastrous flood struck the Kansas City area. The CB&Q direct line between St. Joseph and Kansas City was closed and their passenger trains were detoured via Cameron Junction. Along with general confusion, this resulted in exchanges of tickets, arranging accommodations for about 100 stranded passengers, providing dining car facilities for a delayed troop train, consoling passengers and other activities occasioned by disrupted train service. Among other things, this put strain on the Ticket Office.

The Ticket Clerks and Information Clerk employed in the Ticket Office at Union Depot are assigned to, and regularly perform, the following duties:

- "1. The selling of all tickets that are sold from that office.
2. Make all of the exchanges of tickets that are made at that office.
3. Make all of the endorsements on tickets that are authorized and made at that office.
4. Answer incoming telephone calls and give out information concerning rates, routes and schedules.
5. Give out all information concerning rates, routes and schedules arising from questions directed to them by the traveling public at the ticket office windows."

During the three days in question the CB&Q Division Passenger Agent and his Clerk left their normal and regular place of employment downtown and went to the Union Depot. During these three days the Passenger Agent and his Clerk and the General Agent of the Union Depot were present in the Ticket Office for considerable periods of time and were using the telephone and talking to passengers there. At some of the times during the three days in question, they were engaged in duties of their official positions which were entirely outside the scope of the Clerks' Agreement; or they were engaged in duties that were incidental to, and originating out of their regular positions. Upon these facts there is no essential conflict in the record.

The conflict centers to a minor extent upon hours but primarily upon the question whether the Passenger Agent and his Clerk and the General Agent endorsed and exchanged tickets in the Ticket Office, answered telephones in the Ticket Office for the purpose of quoting rates, routes and schedules, or gave out such information to passengers who came to the ticket windows seeking it.

The conflict arises from eight written statements secured by the Organization and six written statements secured by the Carrier.

Three of the eight Organization statements were based on hearsay; but the other five came from employees who were on duty in the ticket office on the days in question. After the Carrier had declined to conduct a joint investigation, the Vice Chairman of the Organization transmitted copies of the eight written statements to the Carrier; and they are attached to the Organization's submission here.

All six of the Carrier's statements are attached to the Carrier's submission here. Prior to that no copies of any of these six statements were ever transmitted to the Organization, but it does appear that three of them were "shown to the Organization representatives present" at a conference between the Vice Chairman of the Organization and the President of the Carrier. The other three were not secured by the Carrier until after final denial of the claim and so of course were unknown to the Organization until they were disclosed in the Carrier's submission here.

First. It is true that the Passenger Agent and his Clerk sold, endorsed and exchanged tickets and quoted information concerning rates, routes and schedules, both over his own telephone and in person, in his own office and elsewhere. It is also true that the General Agent customarily quoted such information over his own telephone or as he moved around the property supervising the work of the Depot in his official capacity.

But it does not follow from all of this that the Scope Rule of the Agreement was not violated if these three persons conducted these activities in the

Ticket Office and at the ticket windows. Such activities would not originate in, and be properly incidental to, the duties of their regular positions (see Award 2685).

Second. The Organization's evidence, if believed, is sufficient to support the claim. On the essential questions of fact at issue, however, the Organization's evidence is contradicted by the Carrier's evidence.

The record here is all on paper and we, therefore, have none of the means of resolving such conflicts as ready and as accurate as those available on the property. The Organization was clearly not engaged in a fishing expedition here; and while the Carrier is under no general obligation to conduct joint investigations or to exchange documentary evidence on the property, we are at liberty to draw adverse inferences when one party or the other has taken a position which has the effect of throwing every contested issue of fact here for decision and so has not exerted a reasonable effort to settle the dispute on the property (Awards 1256 and 4939).

In this view of the record, we resolve the conflicts in favor of the claim.

Third. This claim started and ended on the property as a dispute on a single issue of fact; and both parties still recognize it fundamentally as such, although the submissions have fanned out into a variety of other questions which, so far as we can ascertain from the record, were neither presented nor discussed on the property. Such being the case, they are not properly 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

The Scope Rule of the Agreement was violated as claimed.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1954.