

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

**THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate the Clerks Agreement:

(1) When effective December 31, 1953, it discontinued the position of Yard Clerk held by W. B. Dailey at Oswego, N. Y., and, concurrent therewith, assigned duties attached to said position to an employe outside the scope of the Clerks' Agreement, as herein described.

(2) The Carrier shall be required to restore the position and work, which was improperly removed from the scope of the Clerks' Agreement, to employes covered thereby, and that W. B. Dailey and any other employes who may have been adversely affected by this violation of the Clerks' Agreement shall be reimbursed for all monetary losses sustained as a result thereof, retroactive to January 1, 1954, such claim to run until the condition is corrected.

EMPLOYEES' STATEMENT OF FACTS: At the Freight Station involved, on the date prior to the improper abolishment of the Yard Clerk position held by Claimant, the relevant forces consisted of the following:

OSWEGO FREIGHT STATION

Supervisory Agent	(not covered by any Rules Agreement)
Clk-Operator	(covered by the Telegraphers' Rules Agreement)
Chief Clk-Cashier	(Fully covered by the Clerks' Agreement)
Billing Clerk	Ditto
Delivery Clerk	"
Yard Clerk	"

All the positions enumerated above carry hours of service 8:00 A. M. to 5:00 P. M.—Monday through Friday—one hour lunch period, Saturday and Sundays as rest days, with the exception of the Clerk-Operator whose hours are 7:00 A. M. to 4:00 P. M., one hour lunch period and Saturday and Sunday as rest days.

Lauderdale. Clerk-Telegraphers covered by the Telegraphers' Agreement are located at the passenger station and clerks are located at the freight station. On April 16, 1949, the Carrier abolished a position of Bill Clerk at the Freight Station and assigned the work of 'expensing of inbound waybills' to a Telegrapher-Clerk at the Passenger Station. Prior to the establishment of clerical positions at the Freight Station the work of 'expensing of inbound waybills' was performed at the Passenger Station by Telegrapher-Clerks and for varying periods from 1936 to 1945 it was also so performed. There is conflict in the record with respect to how the other items of work on the abolished Bill Clerk's position were distributed but as will subsequently appear in this Opinion a resolution of that conflict is not necessary to a disposition of this claim.

"As is apparent from the statement of claim, the employees assert that work was improperly removed from the scope of the Clerks' Agreement and assigned to others (Telegraphers') not covered by the Agreement.

"It is argued on behalf of the Carrier that the case should not be decided on the merits because of failure of the Board to give notice to other 'employees involved,' i. e., The Order of Railroad Telegraphers and the individual employees in interest pursuant to Article 3, First (j) of the Railway Labor Act.

"We are constrained to agree with the Carrier's contention with respect to jurisdiction. As commented in Award 6799, the question of notice under Article 3 First (j) of the Railway Labor Act is not a novel one to this Referee. As indicated therein since the date of Awards 5599 and 5600 there have been no developments in the law which would warrant any change in the views of this Referee with respect to this matter. As a matter of fact the decision of the 7th Circuit in the Illinois Central case decided March 19, 1954, lends further support to the correctness of the views previously expressed. Unless and until the Supreme Court reverses the opinions of the various Circuit Courts on this subject, regardless of personal opinion as to what the law ought to be, we are impelled to accept the Circuit Court's interpretation of the statute as correct.

"We, therefore, conclude that we are without jurisdiction to decide this claim on the merits and find that the claim should be dismissed without prejudice."

There is no rule, precedent, or practice to support the employees' position and the claim should be denied. All data in connection with this case have been handled with the employees on the property.

OPINION OF BOARD: Prior to December 31, 1953 the relevant forces at Carrier's Oswego, New York freight station consisted of a Clerk-Operator covered by the Telegrapher's contract and four employees under the Clerk's Agreement, all of whom were under the supervision of a Supervisory Agent (also performing the functions of a Yardmaster). The Agent is not covered by any agreement. The Carrier decided a reduction in the clerical force at this location was warranted by a decline in coal shipments via Oswego. On or about January 1, 1954 Management therefore discontinued the Yard Clerk position held by claimant Dailey and distributed among the other Clerks and the Clerk-Operator the remaining duties of said position. The claim is that in assigning to the Clerk-Operator certain duties which had been performed by the subject Yard Clerk, the Carrier violated the Clerk's Agreement by removing work therefrom.

The Carrier asserts preliminarily that the Board is without jurisdiction to consider the merits of this dispute without giving notice to the Telegraphers who allegedly are involved per Section 3, First (j) of the Railway Labor Act. We do not think this position is well taken under the facts of this case.

The evidence offered by the Petitioner is distinguished by a paucity of detail. It sets forth the duties formerly performed by Yard Clerk Dailey but does not indicate which of those duties have been assigned to the Clerk-Operator. Because the Claimant had regularly done checking in the yard, among other duties, the inference is drawn that the Clerk-Operator leaves his post to do this work. There is no proof that this is so, however. The Carrier responds that any such checking would be inconsequential in amount even if it were all done by the Clerk-Operator, which Management denies.

On the record before us we can conclude only that the Clerk-Operator fills in his time by performing some of the duties formerly included in the discontinued Yard Clerk position, such fill-in work being done either in the freight house or in the Yard office, which is an adjunct of the freight house. It appears that the Clerk-Operator performs his communication functions in both locations.

We do not find that a contract violation has occurred in this instance. The Board has frequently held that a Telegrapher may perform clerical duties to fill in his time. The disputed position was discontinued because there was a decline in the volume of clerical work to be performed. The diminished duties of the position were distributed among other positions which could properly do such work under the circumstances here present.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1957.