

**Award No. 8135**

**Docket No. TE-7654**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Frank Elkouri, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** 1. The Carrier violated the provisions of the Agreement between the parties, when it blanked the position of Depot Ticket Agent, Tucson, Arizona, and required or permitted employes not covered by the terms of the Agreement to perform these duties, November 9 to 20, 1953, inclusive.

2. The Carrier shall be required to hereafter fill such position with employes covered by the Telegraphers' Agreement.

3. The Carrier shall compensate each of the following named employes a day's pay of 8 hours at the rate of the position involved on the dates shown:

J. J. Mason, November 9, 10, 16, 17, 1953

C. R. Longcor, November 11, 18, 1953

J. L. Carter, November 12, 13, 19, 20, 1953.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an agreement between the parties bearing a date of December 1, 1944 (Reprinted March 1, 1951, including revisions).

A monthly rated Agent under the Telegraphers' Agreement is employed at the Tucson, Arizona, Depot, Ticket Office, shown in the agreement at page 70, as "\*Agent (ticket)—Monthly Rate". This position has no regularly assigned hours, however, they average 8 hours each working day between 6 A. M. and 6 P. M., as provided for in Rule 4, Section (c), paragraphs 1 to 5 inclusive. This Agent normally works 8 A. M. to 5 P. M., with one hour off for lunch.

The following employes not covered by the Telegraphers' Agreement are also employed at Tucson, Arizona, Depot Ticket Office, with assigned hours as shown:

Chief Clerk (A. L. Brown)	5:00 A. M. to 1:00 P. M., daily except Wednesdays and Thursdays.
Cashier (J. B. McCluskey)	8:00 A. M. to 5:00 P. M. one hour for lunch, daily, except Saturdays and Sundays.

"(e) The referee agrees with the carriers that the distribution of work under Article 10 (b) need not necessarily be among employes with common seniority, but it is to be definitely understood that the agreement cannot be applied in a manner which will cross craft or class lines . . . ."

The employes in the ticket office, Tucson, during the absence of the ticket agent on vacation, did not perform any duties other than those they perform during other periods of the year. It is, therefore, apparent that the interpretation quoted above does not support the instant claim.

Had there been necessity for filling this position, it would have been necessary to postpone the ticket agent's vacation, as none of the claimants were qualified for position of ticket agent, and no qualified extra employee was available.

### CONCLUSION

Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

**OPINION OF BOARD:** At its Ticket Office in Tucson, Arizona, during the time involved herein the Carrier employed a Depot Ticket Agent, Chief Clerk, Ticket Clerk-Cashier, and four Ticket Clerks. Of these, the Depot Ticket Agent was under the Telegrapher Agreement and all the others were under the Clerk Agreement. During the period of November 9, 1953, thru November 20, 1953, the Ticket Agent was absent on vacation. Before leaving, he issued the following instruction addressed to "All Concerned Employees Tucson Ticket Office":

"During my absence on vacation such matters that are normally referred to the agent will be handled with Cashier or Chief Clerk on duty.

"Cashier and Chief Clerk are authorized to approve refunds acceptance of checks according to their judgment etc. Matter pertinent to absence and necessary to call extra relief clerk etc, should be handled with Mr. Rife, Chief Clerk, in Traffic Office."

The Organization contends that the Carrier violated the applicable Agreement by allegedly requiring or permitting employes not covered by the Agreement to perform duties of the Depot Ticket Agent while he was on vacation.

Article 10 (b) of the National Vacation Agreement, which applies here, provides:

"Where work of vacationing employes is distributed among two or more employes, such employes will be paid their respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

This provision was authoritatively interpreted by Referee Wayne L. Morse as follows:

"(e) The referee agrees with the Carriers that the distribution of work under Article 10(b) need not necessarily be among

employees with common seniority, but it is to be definitely understood that the agreement cannot be applied in a manner which will cross craft or class lines."

Thus, resolution of the present case requires a fact determination of whether any of the Ticket Agent's "exclusive" duties only under the Telegrapher Agreement were performed by employees under the Clerk Agreement—that is, whether craft lines were crossed. Here the Record fails us since it is woefully deficient as to several material facts and since the evidence which it does contain is in hopeless conflict.

For example, the Organization categorically asserted that employees not covered by the Telegrapher Agreement:

"**DID** perform regular duties belonging exclusively to the agent. Further, the Cashier and the Chief Clerk at Tucson **DID** assume the responsibility of the supervision of the station and its employees as well as other agent's duties during the absence of the agent." (Emphasis is Organization's)

The Organization listed a few duties (including those mentioned specifically in the letter of instruction) which it alleged were the exclusive work of the Agent and which it alleged had been performed during his absence. As to this, the Carrier categorically asserted:

"The allegation is incorrect. It has already been established that the work of the ticket agent at Tucson consists of overall supervision and miscellaneous clerical duties, which are intermingled with chief clerk, cashier and other clerical employees. No telegraph duties are assigned to this position, and during the period here involved employees of the ticket office did not perform any duties other than those performed by them during other periods of the year. To put it in another way, when the agent is absent or engaged in other duties it is the normal duty of the cashier or chief clerk to approve refunds and acceptance of checks, and for the cashier and other clerks to handle railroad unemployment forms and check the cash register tab of the newsstand. It is also the normal and usual duty of all clerks in the Tucson ticket office to check rates on local and interline tickets and to send telegrams over the name of the ticket agent when necessary." (Emphasis is Carrier's)

Which Party is correct? Neither Party submitted any evidence sufficient to support its allegations. Neither Party submitted so much as an affidavit from any employee who works in the Tucson Ticket Office. There simply is no adequate evidence of Record available to the Board for determining the actual facts. There are conflicting assertions only.

Both Parties do appear to accept that the primary duty of the Ticket Agent is that of supervision. In this regard, the letter of instruction does not state that some other employee was to be in general charge of the office; the letter does not clearly state that any supervisory responsibility was to be exercised by others; the letter is in fact ambiguous. Other evidence is necessary. Yet neither Party submitted any concrete evidence as to whether any of the Ticket Agent's supervisory duties were actually performed by the Chief Clerk and/or the Cashier during the Agent's vacation. Nor is there any concrete evidence as to whether the Chief Clerk and/or the Cashier had customarily exercised supervisory responsibility. It can be expected that some Chief Clerks do exercise supervision over other employees while other Chief Clerks do not. The practice in this regard should be established in each individual case—it should not be left to mere guess or assumption. Similarly, the Record contains no evidence as to how, if at all, the Ticket Agent's supervisory responsibility had customarily been covered on Saturday and Sunday (the Agent position was assigned to work Monday through

Friday). This is a material fact which, again, should not be left to assumption. In this kind of case, also, a complete enumeration of the Ticket Agent's duties should be provided, but the Record contains none here.

This Board may be justified in leaving some things to assumption in some cases, but it would not be justified in leaving so many things to assumption as would be necessary for the resolution of the present case on the merits. Here the submissions of both Parties leave too much to be assumed, presumed or guessed. The Present Claim must be dismissed.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 Claim should be dismissed in accordance with the Opinion.

#### AWARD

Claim dismissed in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1957.