

Award No. 8326
Docket No. TE-7307

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake & Ohio Railway (Chesapeake District) that:

(a) the carrier violated and continues to violate the terms of the prevailing agreement between the parties, when, effective January 1, 1950, it arbitrarily and without negotiation removed from the scope of said agreement and from employees covered thereby, the work of handling ticket sales and related work at Fostoria, Ohio, and required or permitted an employee or employees not covered by said agreement to perform such work.

(b) that the work of handling ticket sales and related duties at Fostoria, Ohio, be restored to the scope of the agreement and to the employees covered thereby.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of September 1, 1949, and reprinted April, 1951, is in effect between the parties to this dispute.

At page 75 of this agreement the following positions, classifications and rates are shown in the wage scale:

"Station	Title	Rate
Fostoria Ticket Office	Agent-Operator	\$1.8550
	2nd Operator-Clerk	\$1.6590"

These two employees covered by the Telegraphers' Agreement at Fostoria, Ohio, are assigned as follows:

"Title	Hours Assigned	Relief Days
Agent-Operator	9:30 A. M. to 5:30 P. M.	Saturday and Sunday
Operator-Clerk	8:00 P. M. to 4:00 A. M.	Monday and Tuesday"

The positions are assigned to work seven days a week with Rest Day relief being afforded by other employees under the agreement.

most of the material, including several federal court opinions touching on the matter including the decision of Hon. John P. Barnes, Judge of the U. S. District Court for the Northern District of Illinois (E. D.) rendered on May 6, 1953, entitled *Allain et al. vs. National Railroad Adjustment Board, Third Division et al., Defendants*, and the very recent decision of the United States Circuit court of appeals in the Illinois Central case against the Third Division Board (No. 10959 October Term, 1953, January Session, 1954) decided March 19, 1954, in which Judge Swaim wrote a strong dissent.

* * * * *

"under the circumstances there is nothing for this Board to do except to dismiss the claim without prejudice."

In dismissing claim covered by **Award 6682**, the Board said:

"It appearing that there are other parties involved in this dispute than the ones represented, within the meaning of Section 3 First (j) of the Railway Labor Act, to whom no notice was given, and the Carrier having properly raised the point as a matter of procedure, this claim must be dismissed without prejudice in line with Award 6680, this day announced."

Award 6683 dismissed claim on the same basis as did Award 6682.

It is well established, therefore, that award cannot be properly rendered in this case unless and until due notice is given the Clerks' Organization, an interested party, and the Carrier submits such notice should be given by the Board, as required by Section 3, First, (j), of the Railway Labor Act.

A sustaining award in favor of the Telegraphers will do violence to rights of the clerical employes and is unwarranted. The claim should, therefore, on this ground also be declined.

* * * * *

All data submitted have been discussed in conference or by correspondence with the employe representatives who have made ex parte submission in this case.

(Exhibits not reproduced).

OPINION OF BOARD: The action of the Carrier complained of here was the removal of certain duties from employes covered by the Agreement between the Organization and the Carrier and turning such duties over to clerks covered by the Carrier's Agreement with the Brotherhood of Railway and Steamship Clerks. It is obvious that the relief requested, namely, that these duties be restored to the employes represented by the Organization, cannot be granted without taking such duties away from the clerks.

It is quite apparent that the clerks are "involved" in this dispute within the meaning of Section 3, First (j) of the Railway Labor Act, which reads as follows:

"Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the Carrier or Carriers involved in any dispute submitted to them."

The case is similar on its facts in all respects to that presented in **Order of Railroad Telegraphers vs. New Orleans, Texas and Mexico Railway Co.**, 229F(2nd) 59, Cert. denied 76 Sup. Ct. 548. The present case cannot be distinguished from the case cited as was done in Award 8264.

We think it would be improper to consider the merits of the claim until all the parties involved have received the notice required by law.

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 any decision on the merits must be deferred.

AWARD

Consideration of and decision on the merits is deferred pending notice by the Division to the parties, Carrier, Order of Railroad Telegraphers, and Brotherhood of Railway Clerks, as contemplated by Section 3, First (j), of the Railway Labor Act.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1958.