Award No. 8780
Docket No. CL-8163

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When, effective May 3, 1954, it abolished the clerical position of Car Clerk at Ottumwa, Iowa, and removed clerical work comprised of the regular assigned duties of that position from under the scope and operation of the Clerks' Agreement and utilized a Telegrapher, an employe of another craft and subject to the Agreement of another craft to perform said work in violation of Scope Rule 1 and other related rules of the Clerks' Agreement.

(2) That the clerical work performed by the Telegrapher, an employe of another craft, be returned to the clerical force.

(3) That the Carrier be directed by appropriate Board Order to reimburse all employes affected for any monetary loss sustained, retroactive to May 3, 1954.

EMPLOYES' STATEMENT OF FACTS: April 24, 1954, Division Superintendent R. W. Anderson, Des Moines, Iowa, furnished the following statement regarding proposed abolishment of Car Clerk position, Ottumwa, Iowa:

"Des Moines, Iowa—April 24, 1954

"Title of position: Car Clerk Incumbent: James E. Hunt

Station Location: Ottumwa, Iowa Office Location: Ottumwa, Iowa

Rate of pay: $297.13 Assigned Hours: 6 AM-3 PM (1 hr. meal)

Days per Week: 5 Date position to be abolished: April 30, 1954

Award 4998, Opinion of Board:

"In the instant claim, third trick telegraphers have performed this work from the year 1919 to the war year 1943. Then when his duties became so great, the work was given to clerks. When the work slackened, it was again given back to the third trick telegrapher. When it increased, it was given to a clerk on December 1, 1947, and when it again decreased in July, 1948, it was returned to the telegrapher. It was work incidental to and in proximity with his duties. This we believe the Carrier has a right to do. A denial of this claim is in order. Awards 523, 615, 638, 1566, 2334, 3003 and 4492."

Award 5489, Opinion of Board:

"In the interests of stability in labor relations, we feel compelled to conform to past decisions of this Board interpreting the same or identical clauses of the Agreement unless our past ruling be clearly erroneous. For a concise recital of the ebb and flow doctrine see Award 4477."

As late as December, 1955, your Board upheld the position taken by the Carrier in this dispute. In rendering Award 7198 which denied a similar Clerks' claim on this property at Waterloo, Iowa, your Board referred to Awards 615 and 636, holding that:

". . . It has always been the rule that telegraphers may be assigned clerical work without limit except their capacity to fill out their time when not occupied with telegraphy."

As previously cited in Award 615, your Board held that seniority rules merely control the distribution of the work that is available under the agreement. As we have shown, there was no necessity for maintaining the position of Car Clerk at Ottumwa and for your Board to order its restoration would burden the Carrier with the added expense of maintaining positions, the duties of which can be assigned to the remaining clerical and telegraph employes at Ottumwa without violation of any rule of the agreement.

In view of the long history of this issue before your Board and the determination of it under the applicable agreement in previously cited Awards on this property and others, the Carrier has rejected the Organization's claim and we respectfully request your Board to do likewise.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: A mere reading of the claim indicates that if a sustaining award should be written on this docket, the telegrapher mentioned would be deprived of some of the work he is now doing. He is "involved."

A study of the record indicates the possibility of a sustaining award.

Under the law a sustaining award would be ineffectual against the telegrapher. For this and other reasons as appear in our Award 8408 a determination of this claim on its merits must be deferred pending notice to the telegraphers' organization, giving it an opportunity to be heard.

Judgment on the Carrier's motion to dismiss is also deferred pending the same notice.

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 Employes involved in this dispute are respectively Carrier and Employes 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, subject to the following finding as to notice:

That The Order of Railroad Telegraphers is involved in this dispute and is therefore entitled to notice of hearing pursuant to Section 3, First (j) of the Railway Labor Act, as amended; and

That the merits of the instant dispute are not properly subject to decision until such notice is given.

AWARD

Hearing and decision on merits deferred pending due notice to The Order of Railroad Telegraphers to appear and be represented in this proceeding if it so desires.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April, 1959.