

Award No. 8781
Docket No. CL-8174

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**

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Clerks' Agreement:

(1) When effective September 1, 1954, it transferred clerical work from clerical position to the Telegrapher Operators, employees of another craft, and also on December 4, 1954 the Carrier abolished position of General Clerk and assigned additional clerical work to the Telegraphers at Enid, Oklahoma.

(2) That the clerical work performed by the Telegraphers, employees of another craft, be returned to the clerical forces.

(3) That the Carrier be directed by appropriate Board Order to reimburse Clerks C. E. Davis and W. B. Crow for a call each day claimed until the violation has been discontinued in accordance with claim shown under Statement of facts.

EMPLOYEES' STATEMENT OF FACTS: August 28, 1954, Local Agent at Enid, Oklahoma, Mr. D. P. Coon, issued the following:

"Enid, Okla. Aug. 28, 1954
File Relief Clerk 3½

"Operators, North Enid Yard Office.

"Due to fact the interchange reports badly delayed in the past.

"Effective Sept. 1, 1954, all the written interchange reports and Corrections to be performed by the Operators.

"This is in proximity with your duties as regularly assigned telegraphers.

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 General Clerk at Enid and for your Board to order their 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 employees at Enid 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, that the Telegraphers mentioned would be deprived of some of the work they are now doing. They are "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 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, 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.