

Award No. 8783
Docket No. CL-8221

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

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

(1) When effective January 18, 1954, it abolished a clerical position at Dodge City, Kansas, and removed clerical work, comprised of the regularly assigned duties of that position from under the scope and operation of the Clerks' Agreement and utilized the Agent-Operator, an employee paid a monthly salary, for all services rendered, such employee not covered by the Clerks' Agreement, to perform same, violating Rule 1 and other related rules of the Clerks' Agreement.

(2) That the clerical work performed by the Agent-Operator, an employee of another craft, be returned to the clerical forces.

(3) That the Carrier be directed by appropriate Board Order to compensate V. M. Bolding, Cashier, rate of pay \$312.13 per month, for two and one-twelfth (2-1/12) hours each day at punitive rate, effective January 19, 1954.

EMPLOYEES' STATEMENT OF FACTS: January 11, 1954, the Carrier issued the following letter:

"January 11, 1954
Liberal, Kansas

Messrs:
C. W. Hill
V. M. Bolding
W. F. Leffler

Gentlemen:

"This letter is notice that effective Monday, January 18, 1954 the position of clerk at Dodge City, Kansas (Present incumbent W. F. Leffler) is abolished.

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 Clerk at Dodge City and for your Board to order its restoration would burden the Carrier with the added expense of maintaining a position, the duties of which can be assigned to the remaining clerical and telegraph employees at Dodge City 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 THE BOARD: A mere reading of the claim indicates that if a sustaining award should be written on this docket, the telegrapher (Agent Operator) 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 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.