

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, 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 General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Clerks' Agreement:

(1) When on December 3, 1951, the Local Agent at Hutchinson, Kansas, instructed the Chief Clerk-Cashier to assign Freight Office clerical work to the Ticket Agent-Operator, and removed clerical work comprised of the regularly assigned duties of the Bill Clerk from under the Scope and operation of the Clerks' Agreement by utilizing an employe of another craft, and subject to the Agreement of another craft, to perform said work, in order to avoid the overtime rule of the Clerks' Agreement.

(2) That the clerical work of handling Freight Accounts, such as expensing, signing bills of lading, and other clerical work in connection with Freight Accounts, performed by the Ticket Agent-Operator, an employe of another craft, be returned to the clerical forces.

(3) That the Carrier be directed by appropriate Board Order to pay the claims filed by Nettie Seck, Bill Clerk, in accordance with claims filed, at Bill Clerk's rate of pay. (See Exhibit "A" attached.)

(4) That the Carrier be directed by appropriate Board Order to pay the claim filed by O. R. Reese, Yard Clerk, at Yard Clerk's rate of pay. (See Exhibit "B" attached.)

See Award 8669 for Statement of Facts and Positions of the Parties.

OPINION OF BOARD: This case and its claims were previously considered in this Division's Award No. 8669. Therein it was ruled that the claims had been timely filed with this Division but that, before the claims could be

considered on their merits, a hearing must be held offering to the Telegraphers an opportunity to present testimony. On February 10, 1959, notice was sent to Carrier, the Clerks, and the Telegraphers of a hearing to be held on March 10, 1959. Said hearing was held as scheduled, but the Telegraphers were not represented, having on February 13, 1959, sent to this Division a communication wherein they stated that their Organization was not involved in the instant dispute.

The procedural and jurisdictional requirements of Section 3, First (j) of the amended Railway Labor Act, as interpreted by the Federal Courts, having been satisfied, and the Board having previously ruled that the Organization's ex parte submission had been timely filed, the Board now finds that the merits of the instant claims are properly before it.

The material facts do not appear to be in dispute. Before July 21, 1951, Carrier had operated a local freight office separate and apart from its passenger station at Hutchinson, Kansas. At the latter there were no clerical positions; the work force consisted of a ticket agent and telegraph operators, all subject to the Telegraphers' Agreement. At the freight station the work force was composed of a chief clerk-cashier, a rate clerk, an O.S. & D. claim clerk, a bill clerk, and a demurrage or yard clerk, all subject to the Clerks' Agreement.

Effective July 21, 1951, Carrier moved the local freight office force into its recently constructed new passenger station. None of the previous positions was abolished following said move. On December 3, 1951, Carrier's local agent wrote to the chief clerk-cashier asking that, "when additional help needed," the agent and/or the operators be used to provide proper clerical service.

Beginning November 28, 1951, and ending November 29, 1954, the Agent-Operator expensed varying numbers of bills on various dates (121 dates in all). For said dates Claimant Bill Clerk Seck is asking varying amounts of punitive (overtime) pay, ranging from one-fourth hour to four hours.

Beginning December 8, 1951, and ending February 9, 1952, the Ticket Agent signed various numbers of bills of lading and diversions on nine different dates. For said dates Claimant Yard Clerk Reese is asking from one-fourth to one-half hours of punitive pay.

The Employees do not allege violation of any rule of the Agreement dealing with particular duties of Carrier or particular rights of employees subject to the Agreement. Rather do the Employees contend that the general Scope Rule was violated.

The Board finds that no specific rule is involved in the instant case. No particular rule directly prohibited Carrier from moving the freight office force into the passenger station offices. Carrier had the right to effect said consolidation unless the purpose or the main direct effect of such move was to violate the general Scope Rule. The record contains no evidence that such was the purpose of the consolidation. Nor does the record establish that the primary or direct effect of said transfer was such violation. Rather does it appear that, because the Carrier's actions here complained of began almost five months after the consolidation and ceased after a while, the alleged violations were incidental and secondary. It may be true that Carrier's directive of December 3, 1951, would not have issued in the absence of the consolidation, but purpose and effect cannot be inferred from this presumption.

Following Award No. 8793, the Board finds that, in the absence of controlling specific rules, the instant claims are to be determined, if possible, by an application, to the facts of record, of the principles developed by this Division in respect to general scope rules of the kind here involved.

The facts are that (1) no Clerk's position was abolished; (2) the Carrier's directive of December 3, 1951, said that, when **additional** help in the work was needed, Telegraphers should be used; (3) Telegraphers were so used; (4) after almost three years such use was stopped; and (5) for many years before 1951 and after 1954 Clerks performed the work in question.

There can be no question that, after the consolidation of offices and forces, the work here complained of was in proximity to and incidental to the telegraphic work. The Board can find no violation of this principle. But in respect to the principle that Telegraphers may be given clerical work suited to their capabilities to the extent necessary to provide a full eight hours of work per day, the factual record is inadequate. True, there is no contention that the Telegraphers worked overtime in order to perform their newly assigned clerical duties. But the Board would be guilty of logical error if it inferred from this fact that the Telegraphers had previously had sizeable amounts of idle time. The Board finds that Carrier failed to establish such free time.

As to the basic flow-ebb principle, the Board finds that same is not involved here. Carrier has failed to produce positive evidence not only on the ebb-effect, if any, but also on the causes of same, if any. However, the facts that no Clerks' jobs were abolished and that Carrier's directive spoke of "additional help" persuade that there was no ebb in clerical work.

Under all these circumstances the Board finds that Carrier's actions here complained of were improper and in violation of the general Scope Rule as here interpreted and applied. The claims have merit and are to be sustained.

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 the Carrier violated the Agreement.

AWARD

Claims (1), (2), (3), (4) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April, 1959.