

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, 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 November 7, 1953, it abolished the clerical position of Cashier at Faribault, Minnesota, which was an eight-hour assignment, and removed clerical work comprised of the regularly assigned duties of that position from under the scope and operation of the Clerks' Agreement, utilizing the Agent and Telegraphers, employees 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 assigned to the Agent and Telegraphers, employees of another craft, be returned to the clerical forces.

(3) That the Carrier be directed by appropriate Board Order to reimburse W. L. Savoie, former Cashier, Faribault, Minnesota, and other clerical employees affected, for any monetary loss sustained, retroactive to November 7, 1953.

(See Award 8672 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. 8672. 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 Clerks' ex parte submission had been timely filed, the Board now finds that the merits of the instant claims are properly before it.

Before November 7, 1953, Carrier maintained at its station in Faribault, Minnesota, a monthly-rated clerical position of Cashier, occupied by claimant. At said station Carrier also maintained the positions of Agent-Operator, Second Trick Operator, and Third Trick Operator.

It appears from the record that the position of Cashier at said station had existed for some 40 years, was in existence when the first Clerks' Agreement was negotiated in 1922, and was also in existence when subsequent Agreements were negotiated.

By notice of October 16, 1953, Carrier told claimant and his Division Chairman that the Cashier position would be abolished as of November 6, 1953. Said notice listed the various duties performed by claimant, the amounts of time involved thereon, and the disposition of said duties among the three employees subject to the Telegraphers' Agreement. The total amount of time involved in all said duties was given as five hours and 50 minutes. Of these 350 minutes, work totaling 205 minutes was allotted to the Agent, work amounting to 80 minutes to the Second Trick Operator, and 65 minutes to the Third Trick Operator.

The Organization denied that only 350 out of 480 minutes of work remained in the Cashier's position. The Organization's own estimate was a total of 510 minutes. However, Carrier on the property contended, without subsequent successful contradiction by the Organization, that a number of the duties and minutes included by the Organization were not properly part of the work and time of the Cashier's position and that, therefore, said position was substantially less than full-time at the time it was discontinued.

This case involves the same parties and the same Rules as those in Award No. 8793. The facts differ only in that in the instant dispute there was no consolidation of offices and there was no clerical position left after the Cashier's position was abolished. The Parties make substantially the same contentions and cite in general the same Rules and the same Awards of this Division. Carrier again confines itself mainly to general statements and offers little positive, specific evidence in support thereof.

As to the particular Rules in the Agreement—Rule 1, Section 2(k); Rule 2 and its Interpretation 1; and Rule 69 and its Interpretations—the Board rules as it did in Award No. 8793: Carrier did not violate these Rules. The first two are inapplicable here. In respect to the third, since there was no Clerk's position remaining after the Cashier's position was abolished, it was not possible to return the latter's remaining work to any Clerk's position from which it may have originated.

As to the three interrelated principles involved in the interpretation and application of the general Scope Rule, the facts of record show only that at the time of abolishment the Cashier's position had something less than eight full hours of work and that Carrier apportioned the work thereof in the manner stated above. This information is not enough to establish beyond reasonable doubt that a decline in business or other conditions had caused an ebb-effect

in the work of the station, giving the Telegraphers idle time and reducing the total volume of clerical work. Carrier should and doubtless could have produced such casual information.

As in Award No. 8793, so here: There is an insufficient basis for a complete and final denial of the instant Claims. The Board rules a denial. But this Award, except in respect to the compensation requested in Claim (3) up to the date of this Award, is not *res adjudicata* and will not preclude further action by Petitioner, if the latter desires, up to and including, if necessary, hearing by this Board on the facts and merits.

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 Petitioner failed to establish the Claims.

AWARD

Claim denied in accordance with the Opinion and Findings.

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.