

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 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 August 23, 1954, the Local Agent at Pratt Kansas, issued instructions to the second shift Telegrapher to make interline ticket reports and also to bill some carload and less than carload freight, as well as issuing instructions to the third shift Telegrapher to expense some carload and less carload billing.
- (2) That the clerical work of billing and expensing, as well as making interline ticket report, performed by Telegraphers, employees 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 the clerical employees at Pratt, Kansas, effective August 23, 1954, by allowing a call account clerical work transferred to the second shift Telegrapher, for George A. Gorsulowsky, Yard Clerk No. 2 on Monday and Tuesday of each week; John R. Belton, Freight Clerk, Wednesday and Thursday of each week, Frank P. Shea, Cashier, Friday and Saturday of each week; and Harley P. Grover, Extra Clerk, Sunday of each week;
- (4) Also that the Carrier be directed by appropriate Board Order to pay the claims filed by clerical employees at Pratt, Kansas, effective August 23, 1954, by allowing a call account clerical work transferred to the Third Trick Telegrapher, for Byron K. Whitehead, Relief Clerk No. 20, for Monday and Tuesday of each week; S. S. Keene, Yard Clerk No. 3, for Wednesday and Thursday of each week; Jack Kirkpatrick, Relief Clerk No. 21, Friday and

Saturday of each week; and Harley P. Grover, Extra Clerk, for Sunday of each week.

See Award 8779 for Statement of Facts and Positions of the Parties.

OPINION OF BOARD: This matter is before us by virtue of Award 8779, wherein we held the merits of the claim until a third party notice could be given to the Telegraphers' Organization, which we said was involved in this dispute.

The Telegraphers' Organization, through its President, wrote a letter, similar to that sent in all these cases, wherein he responds to the Third Party Notice in what amounts, in law, to a disclaimer, i. e., "a formal refusal to join issue." (C. J. S. 26 A 971)

We now proceed to consider the case on its merits.

On August 18, 1954 there was an agreement entered into between the local chairman of the organization and the carrier that in reducing the duties of the night roundhouse clerk so as to fit his position into a five day week assignment, the work he had been doing on Saturday and Sunday (issuing C. T. 315 reports, calling enginemen, handling crew board for roundhouse man, supplying cabooses, cleaning of waiting rooms and ladies' restroom) would be turned over to yard clerks, and a day roundhouse clerk. The transfer of some of these duties to the telegraphers forms the basis of the claim herein.

On August 21, 1954 the National Agreement, to which this Carrier, the Clerks' Organization and the Telegraphers' Organization are parties and in which, in Article VIII thereof it was agreed—

"ARTICLE VIII—CARRIERS' PROPOSAL NO. 24

"Establish a rule or amend existing rules to recognize the Carriers' right to assign clerical duties to telegraph service employees and to assign communication duties to clerical employees."

"This proposal is disposed of with the understanding that present rules and practices are undisturbed."

The present rules and practices, on this Carrier were at that time, "that telegraphers may be assigned clerical work without limit except their capacity to fill out their time when not occupied with telegraphy." Award 7198. This quotation from Award 7198 stems, as we all know, from Awards 615 and 638.

In this connection we have carefully studied Award 3932, relied upon by the Organization, where Judge Douglas criticizes Award 615 and says it does not authorize a carrier to remove at will work from the Clerks' Agreement and assign it to Telegraphers but he goes on to say "This may be done only when permitted by agreement or in those specific instances established by long custom and usage as to be considered proper exceptions to the Clerks' Agreement." (Emphasis ours)

The best proof that this was true on this carrier is, we think, that no award, except 638, is cited by the Organization on the Rock Island until

the recent effort by the Organization to change the practice on this carrier was launched.

In Award 638, a sustaining award, it was held that the carrier violated Rule 69, but the award recognized the "limitation on the right of the Clerks to the exclusive performance of clerical work, consisting in the right of the carrier to assign some of such work to telegraphers to fill out their idle time." Rule 69 was not violated in the instant case.

Therefore, when, as disclosed by the instant claim, the Carrier assigned certain clerical duties to the telegraphers no rule in the current agreement was violated. Award 8793.

We cannot sustain claims against a carrier without showing a violation of some rule of the agreement.

Now, lest it be thought that this referee brushed aside all the discussion about the theory of "ebb and flow" which has confounded our awards to a point where no one understands them, let it be said he has never been committed to Referee Daugherty's "specific" "flow and ebb" theory, as suggested in Award 8793, but does subscribe to his "general" flow and ebb theory, i. e., "An increase in freight and/or passenger business at a particular station, the consolidation of facilities, the relocation of a facility, or circumstances." Award 6610.

The suggestion in Award 8793 that different rules might be needed at local stations, or local divisions, is just not susceptible to practical railroad administration,—the most we can hope for is some attempt at uniformity on a given carrier.

Our conclusion is that the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1959.