

Award No. 9032
Docket No. CL-8675

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Carrier violated and continues to violate the Schedule for Clerks in requiring or permitting telegraphers at Forrest, Illinois, to perform clerical duties assigned to and performed by clerk D. W. Leeper during his daily hours of assignment on each day of his assigned work week Monday through Friday.

(2) Clerk D. W. Leeper shall be compensated at overtime rate of his clerical assignment at Forrest, Illinois, for the amount of overtime claimed on each date which has been made a matter of record and declined by Carrier as set forth in letter of Mr. F. A. Johnson, Assistant General Manager dated June 14, 1954, file 103.52, 103.7.

EMPLOYEES' STATEMENT OF FACTS: Two clerical positions are maintained by the Carrier at Forrest, Illinois. Position held by clerk Donald W. Leeper is a six (6) day position with rate of \$15.07 per day. Assigned work week of Clerk Leeper is Monday through Friday. Hours of assignment are 11:30 A.M. to 8:30 P.M., one hour meal period. Rest days Saturday and Sunday. A relief clerk is assigned to work the position on Saturday of each week.

Clerical work performed by telegraphers is outside the assigned hours of the position held by Clerk Leeper and on dates for which less than two hours is claimed, work performed by telegrapher was continuous with and in advance of the regular work period of the clerical assignment.

In addition to an exclusive agency, the Carrier maintains three positions of telegraphers with twenty-four hour service at Forrest, Illinois.

The clerical work necessary to interchange cars between the Wabash and T.P.&W. and the making of switch lists and cut-out sheets has always been performed to a certain degree by telegraphers at Forrest from a date prior to the inception of the first Schedule for Clerks to the present time. It cannot now be reasonably contended that all clerical work should be performed at all times by clerks. The presentation of this claim to this Board is an attempt to require the carrier to remove from telegrapher positions that incidental clerical work which they have always performed, without an agreement to do so.

Again attention of this Board is directed to the statements of former telegrapher and Agent at Forrest, Mr. Fleming, as to the performance of clerical work at the station while he was employed in those capacities during the years 1913 to 1940 (See Carrier's Exhibit "A") and to the statement of former Agent McIntire that the Agent and telegraphers at Forrest performed the clerical work in question from the time that he was assigned at that station in 1940 (See Carrier's Exhibit "B").

CONCLUSION

The petitioner is attempting to obtain through the medium of an award by this board a rule which would prohibit telegraphers at Forrest, whose working conditions are governed by an agreement with The Order of Railroad Telegraphers, from performing clerical work. Clerical work has been performed by telegraphers at Forrest, Illinois, for as long as the carrier has employed telegraphers at Forrest. It has been recognized for many years that employees covered by that agreement may perform station work in conjunction with their telegraphic duties and likewise clerical employees can perform certain types of station work. However, neither telegraphers nor clerks have been granted a monopoly in the performance of clerical work.

The carrier affirmatively states that the substance of all matters referred to herein has been made the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Mr. D. W. Leeper, for whom the claim is made, is a Clerk of the Carrier at its station at Forrest, Illinois. It is asserted that the work for which overtime compensation is sought for certain dates, within a period from June 2, 1952 and October 26, 1953, inclusive, was improperly assigned to Telegraphers at the station. The overtime periods set up by itemization to support the claim are as little as 25 minutes and not more than 2 hours.

During the time encompassed by the claim, there were stationed at Forrest, an Exclusive-Agent, three Telegrapher-Levermen, seven day positions, one Clerk, Mr. Leeper, six day position, Sunday excepted and a second Clerk, seven day position.

Mr. Leeper's hours were from 11:30 A. M. to 8:30 P. M., one hour off for lunch. One Telegrapher came on duty at 7:00 A. M., and served until 3:00 P. M., a second Telegrapher came on at 3:00 P. M. and remained until 11:00 P. M. The hours of the second Clerk were from 11:50 P. M. to 8:50 A. M. Thus, at all times there was a Telegrapher on the job but from 8:50 A. M. until 11:30 A. M., when Mr. Leeper came to work no other Clerk was on duty and from 8:30 P. M. to 11:50 P. M., no Clerk was on duty.

In the interim between 8:50 A. M. and 11:30 A. M., when Mr. Leeper was required to report, the one Telegrapher then on duty did the same type of clerical work which Clerk Leeper did during his tour of services. An award is asked that this work done by the Telegrapher in the absence of Mr. Leeper, Clerk, properly belonged to him and that he should be compensated for the time lost.

The Organization grounds its claim on the Scope Rule, Schedule for Clerks, in the controlling agreement between the parties, which, insofar as pertinent to our question, reads:

"(1) CLERKS DEFINED—Employees who regularly devote not less than three (3) hours per day to the performance of clerical work, irrespective of where or in what department employed, including checkers, ticket clerks, station baggagemen, switchboard operators, foremen of freight houses and supply departments."

Then follows a list of employees who are not to be classified as Clerks.

Manifestly this rule does no more than its heading denotes, namely, to define who are Clerks, it does not undertake to specify the clerical work preempted to Clerks in the Carrier's service. Clerical work is done by many employees, as an incident to their duties, and thus there are exceptions to the necessity of assigning all work of a clerical nature to Clerks. No doubt, because of the general terms of Rule 1, and the fact that it does not define the work which, as a matter of right, is to be done by Clerks, many claims have been presented to this Division of the Board, and decided by it, clarifying the conditions under which their craft may be protected in its classification.

Without discussing generally these opinions and awards, upwards of fifty of which have been submitted to us, we narrow our consideration to the rights of the claimant under the facts developed. In so doing, it is recognized that under certain circumstances a Telegrapher may do the work which normally a Clerk would have the right to perform.

Factually it appears, that in a period from 1913 to February 8, 1951, much of the time a Telegrapher only was on duty who did all the clerical work and when there also was a Clerk on duty, when his tour of service was completed and no Clerk was assigned, a Telegrapher did the clerical work. The latter practice has been followed to the date of this claim.

It must be assumed that, from the nature of the work to be done at Forrest and the fact that nothing appears in the record to the contrary, the services of a Telegrapher was at all times required. It is also developed that the clerical work in controversy was done at the station without movement therefrom. It is a truism that a Telegrapher can do work of a clerical nature but that a Clerk is not so qualified.

In an early Award No. 615, this Division, it is said:

"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."

A later Award No. 4559, modifies and limits somewhat the conditions, set forth in the earlier quoted award, under which Telegraphers may properly do the work of Clerks, in this language:

"A Telegrapher with telegraphic duties to perform may properly perform clerical work, which is incident to or in proximity of his telegraphic work, to such an extent as to fill out the telegraphic assignment."

It is not necessary to a decision of our question to make choice between these somewhat different standards as it is evident that the facts here clearly conform to the requirements of the more limited and stricter conditions in the letter of the foregoing cited awards.

Other principles come into play upon the facts developed. They are, practice uniformly and continuously followed by the parties; their construction of the respective rights by the practice which by common consent was followed.

We have examined, as far as practicable, the Awards cited by the Organization and without commenting on them in detail, which would unnecessarily protract this opinion, suffice to say, we find none which on the facts there developed can not be reconciled with the principles upon which this award rests.

In view of the finding and award herein, there is no necessity to give notice of the pendency of these proceedings to the Order of Railroad Telegraphers.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.