

Award No. 9547

Docket No. CL-9367

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William E. Grady, Referee

PARTIES TO DISPUTE:

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

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

1. Carrier violated and continues to violate agreement rules by establishing a position of "Assistant Agent—Covina-San Dimas" under the agreement of another craft and class, to perform clerical work at and incidental to the Covina, California, Agency, and concurrently therewith abolishing position of Station Clerk, Job No. 2.

2. The Carrier shall now pay S. V. Hall, former incumbent of abolished Station Clerk Job No. 2, a day's pay at the rate of pay of Station Clerk Job No. 2 for November 14, 1955 and continuing, for each date of violation.

EMPLOYES' STATEMENT OF FACTS: The Operating Department of the Carrier maintains a non-telegraph agency station at Covina, California, engaged in the carload and less than carload freight business, express, and the selling of passenger transportation.

Previous to the effective date of the Clerks' Agreement with the carrier, the clerical work of the agency was performed by employes under the supervision of an employe with title of Agent. On April 1, 1935, the Clerks' Agreement with Carrier became effective and until inception of this dispute in 1955 was applied to all employes at Covina other than the Agent, whose position was first covered and identified by Agreement between the Carrier and The Order of Railroad Telegraphers dated September 16, 1934.

Immediately prior to August 1, 1955 the following station force was identified and maintained at Covina, working between the hours of 8:00 A. M. and 5:00 P. M., daily, except Saturday and Sunday:

Agent, Job No. 1

Station Clerk, Job No. 2 (regular incumbent S. V. Hall)

For many years previous to this dispute the Carrier maintained a non-telegraph agency station at San Dimas, California, several miles from Covina, California, engaged in the carload, express, and less than carload freight business, 8:00 A. M. to 5:00 P. M., daily, except Saturday and Sunday. In recent

"2. We have frequently held that this Board is without authority to require the Carrier to re-establish any position. See, for example, Award No. 4987, involving the same parties."

For the ready reference of the Board, Item No. 2 of the "Statement of Claim" in Award No. 6455 reads as follows:

"2. The Carrier shall restore all employes affected to their respective positions as of May 3, 1951, and * * *"

The Board denied part 2 of this claim.

Suffice to say, this portion of the claim must be dismissed.

5. DISMISS THE CLAIM BECAUSE ITEM NO. 2 OF THE CLAIM IS IMPROPER.

The named claimant in the instant dispute was not working under the terms of the Clerks' Agreement on the date alleged violation occurred and was not available for any work under this Agreement until November 21, 1955. Upon returning to an "active" status under the Clerks' Agreement (November 21, 1955), he was paid a rate of pay exceeding that for which claim has been presented.

The Board will note that the request of the Organization is limited to "* * a day's pay at the rate of pay of Station Clerk Job No. 2 for November 14, 1955 and continuing, for each date of violation."

Effective December 9, 1955, the named claimant became a permanently assigned agent at another of the Carrier's agencies, and is not available for any work under the Clerks' Agreement.

On this basis alone, the claim should be dismissed.

CONCLUSIONS

The Board is respectfully requested to:

1. Dismiss the claim because the Board is without legal authority to render an award in the absence of notice to all parties involved.
2. Dismiss the claim because the alleged violation does not in fact exist.
3. Dismiss the claim because there has been no violation of the collective agreement in effect between the parties to the dispute.
4. Dismiss the claim because the Board is without any authority to require the Carrier to re-establish any position.
5. Dismiss the claim because Item No. 2 of the claim is improper.

All data in support of Carrier's Submission is within the knowledge of the employes. Carrier reserves the right to submit additional data in opposition to data which may be presented by the employes and of which the Carrier now has no knowledge.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is kin to that in Docket No. 9218, which is the subject of Award No. 9546.

The claim, in substance, is that the Carrier, in violation of its Agreement with the Brotherhood, abolished the job of Station Clerk at Covina-San Dimas, California, and assigned the work to a new position at that location, namely Assistant Agent, covered by an Agreement between the Carrier and The Order of Railroad Telegraphers. Notice has been given to the Order under Section 3, First (j) of our statute.

The claim involves two non-telegraphic agencies, Covina and San Dimas, decline of business at San Dimas, closing of the San Dimas facility (after a fire), merger of the San Dimas and Covina agencies as Covina-San Dimas, establishment of the job of Assistant Agent, Covina-San Dimas on August 1, 1955, transfer of the San Dimas Agent to Covina-San Dimas on September 1, 1955 and abolition of Claimant's job of Station Clerk at Covina-San Dimas on November 11, 1955.

The situation presented in Docket CL-9218 so closely parallels that her presented as to make extended discussion unnecessary. We shall sustain the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of September, 1960.

DISSENT TO AWARD NO. 9547 (DOCKET NO. CL-9367)

Our Dissent to Award No. 9546, Docket No. CL-9218, applies with equal force here.

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. F. Mullen

**LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO
AWARD NO. 9547, DOCKET NO. CL-9367**

What I had to say in my Answer to Carrier Members' Dissent to Award No. 9546, Docket CL-9218, applies equally as well here.

/s/ J. B. Haines
J. B. Haines
Labor Member

**CARRIER MEMBERS' REPLY TO LABOR MEMBER'S ANSWER TO
CARRIER MEMBERS' DISSENT TO AWARD NO. 9547,
DOCKET NO. CL-9367**

Our reply to Labor Member's Answer to Carrier Members' Dissent to Award No. 9546, Docket No. CL-9218, is by reference applicable here.

/s/ J. E. Kemp
/s/ R. A. Carroll
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. F. Mullen

**LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' REPLY TO
LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT
TO AWARD NO. 9547, DOCKET NO. CL-9367**

My Answer to Carrier Members' Reply to Labor Member's Answer to Carrier Members' Dissent to Award No. 9546, Docket No. CL-9218, is by reference made a part of my Reply here.

/s/ J. B. Haines
J. B. Haines
Labor Member

**CARRIER MEMBERS' REPLY TO LABOR MEMBER'S CURRENT
EFFUSION IN CONNECTION WITH AWARD NO. 9547,
DOCKET NO. CL-9367**

Our reply to Labor Member's current effusion in connection with Award No. 9546, Docket No. 9218, is by reference applicable here.

/s/ J. E. Kemp
/s/ R. A. Carroll
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. F. Mullen