

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
(excepting Boston Division)**

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, New York Central Railroad Company, Eastern District (except Boston Division):

1. — That Carrier violated the Clerks' Agreement when, effective April 15, 1955, it abolished the position of Bill Clerk at its Freight Station, Wellsboro, Pa., and used the Agent, who is covered by the Telegraphers' Agreement, to perform the work of this position.

2. — That Carrier be required to restore the position of Bill Clerk and fill this position in conformity with applicable provisions of the Clerks' Agreement.

3. — That Carrier be required to fully reimburse Mr. Francis B. Kennedy and all other employees covered by the Clerks' Agreement for wage losses sustained because of the above violation of this Agreement, from date the position of Bill Clerk at Wellsboro, Pa., was abolished until such position shall have been restored and filled as aforesaid.

EMPLOYEES' STATEMENT OF FACTS: All passenger service on the Pennsylvania Division was discontinued by the Carrier many years ago.

Wellsboro, Pa., is on a dead end branch that connects with Main Line of the Pennsylvania Division at Wellsboro Junction, Pa., located 2.94 miles distant, and at which latter point a Signal Tower is maintained.

The said branch is served by one locomotive, operation of which is not controlled by train orders.

4. RULE 1, THE SCOPE RULE OF THE CLERKS' AGREEMENT, DOES NOT RESERVE TO ANY OF THE EMPLOYEES LISTED THEREIN THE RIGHT TO PERFORM CLERICAL WORK TO THE EXCLUSION OF ALL OTHER CLASSES OF EMPLOYEES.

Rule 1 — Scope of the current agreement reads:

"Employees covered by these rules will be divided into two classes.

"Class 1. Clerks as defined in Rule 2 and such employees as ticket sellers or clerks, crew dispatchers, chief callers, freight and baggage tallymen or checkers.

"Class 2. Other office, store and station employees such as train announcers, gatemen, ushers, baggage and parcel room employees, telephone switchboard operators, elevator operators, operators of office and station equipment devices not requiring clerical ability, watchmen, office boys, janitors, stevedores, coopers, freight handlers, laborers and others similarly employed in and around stations, warehouses and storehouses.

"Exceptions. (Not reproduced)".

The scope rule merely lists the classes of employees whose employment and compensation are governed by the agreement. It does not define the duties of those employees, nor does it set forth the duties that will be reserved to or that will be exclusively performed by the classes of employees listed. Furthermore, the scope rule does not set up any restriction against the performance of specific duties or work by employees outside the agreement.

The logical presumption is that the Employees consider the scope rule a contractual obligation that reserves to employees listed therein any and all duties and work customarily performed by those employees. To follow this line of reasoning to its logical conclusion would mean that none other than an employee under the Clerks' Agreement could perform clerical work. All agents on this property have been and are performing all station work, including incidental clerical work, to the extent of filling out their regular tour of duty.

CONCLUSION: In Conclusion, the Carrier submits that:

1. The abolishment of the clerical position when the need for it no longer existed was entirely proper.

2. It has been recognized for many years prior to and during the years the Clerks' Agreement has been in existence that station agents may properly perform all phases of station work.

3. The Scope Rule of the Clerks' Agreement does not set up any restriction against the performance of clerical work by station agents.

(Exhibits not reproduced.)

OPINION OF BOARD: After abolishment of the clerical position involved herein on April 15, 1955, the Agent did not perform any duties that

he had no right to perform in filling out his tour of duty; in the latter regard Awards 9329 and 9330 are controlling in that they involve the same Parties and Agreement involved here and in that there are no sufficient distinctions between the present case and the cases covered by those Awards to justify the Board in now reaching a result different from that reached there. Also see Awards 4348 and 5803. Moreover, the doctrine of "flow and ebb" applies under the facts of the present case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence; finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of December, 1960.