Award No. 9762
Docket No. CL-9213

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

a. The Carrier violated and continues to violate the rules of the Clerks' Agreement when effective May 30, 1955, it removed the work involved in selling tickets, handling baggage, handling messages in connection with space reservations, etc., from employes within the scope of the Clerks' Agreement and has permitted or required this work to be performed by employes outside the scope of the Clerks' Agreement or by employes of another railroad, and

b. That Messrs. A. J. Streeter, Second Trick yard clerk; M. C. Salaz, Third trick yard clerk; and F. F. Strange, relief clerk, and/or their successors, be compensated for one day at the rate of time and one-half for each and every day that they have been deprived of the opportunity of performing the work listed in (a) above, beginning May 30, 1955, and continuing until this violation is corrected.

EMPLOYES' STATEMENT OF FACTS: The Western Pacific Railroad Company's main line runs from San Francisco, California to Salt Lake City, Utah. One of the main trunk lines of the Southern Pacific also runs between San Francisco, California and Ogden, Utah. Both lines run through Elko, Nevada, and the passenger stations at that point are located approximately 300 yards apart.

On February 28, 1924, a Paired Track Agreement, covering the trackage from Weso on the West to Alezon on the East (a distance of approximately 177 miles), was executed and on August 27, 1924 paired track operations began, and thereafter all eastbound trains on the paired track operated over Western Pacific rails and all westbound trains operated over Southern Pacific rails through Elko, Nevada.

The clerical work performed by clerks in the territory covered by the joint trackage arrangement has always been done by Western Pacific Clerical Employes at Elko, with the exception of the work of Cashier which has been done by the Southern Pacific Cashier at Elko.

Furthermore, without prejudice to Carrier's position on the merits of this dispute, Carrier asserts that the measure of penalty sought in this case (pay at the time and one-half rate) is contrary to the settled policy of your Board that payment for work not performed shall be at the straight time rate.

In conclusion, Carrier restates its position that the instant claim should be dismissed because the Board has failed to comply with the statutory condition precedent to its acquisition of jurisdiction; namely, issuing notice of hearing to all parties involved. Additionally and without prejudice to Carrier's motion to dismiss for lack of jurisdiction, Carrier asserts that the instant claim is wholly without merit and must be denied.

All of the above has been presented to the Employes.

(Exhibits Not Reproduced)

OPINION OF BOARD: In 1924 the Southern Pacific and Western Pacific Railroads entered into a paired track agreement, whereby all Westbound trains of the two Carriers operated over Southern Pacific rails and all Eastbound trains operated over Western Pacific rails through Elko, Nevada. All the combined clerical work was performed at the separate depots maintained by each Carrier. Claimants, employes of Western Pacific, performed the clerical work incident to such operation at Western Pacific Passenger station and also performed some of the clerical work at the Southern Pacific Station at Elko. The latter evidently through an arrangement between the two Carriers.

Effective May 30, 1955, Southern Pacific decided to perform all of the clerical work at its own passenger station, with its own employes, which included the clerical work that was incident to the operation of Western Pacific Westbound trains over its tracks. It is this occurrence that gives rise to the confronting dispute. At no time have the Petitioners protested the paired track agreement, nor do they do so here. They merely claim that they should be allowed to continue to perform the clerical work at the Southern Pacific Depot at Elko, Nevada.

The fact that the Southern Pacific Company decided to have its own employes perform its work at the Southern Pacific Depot is a circumstance over which the Western Pacific had no control. The employes of the Western Pacific can only do work which the Western Pacific has to offer. Work which comes to the Western Pacific from a third party can be discontinued and since in this case the Southern Pacific decided to discontinue having the Western Pacific do some of its work the Western Pacific did not violate the Agreement.

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 16th day of December 1960.