

Award No. 9777

Docket No. TE-8686

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake & Ohio Railway (Chesapeake District) that:

1. The Carrier violated the terms of the effective agreement between the parties when, on September 1, 1954, it declared abolished the position of Ticket Agent at Lexington, Kentucky, without in fact discontinuing the work properly belonging to and performed by the ticket agent at that station, and transferred the work of said position and assigned the performance of same to an employee or employees not covered by the terms of the Telegraphers' Agreement; and
2. The work formerly performed by the ticket agent at Lexington, Kentucky, including the regular assigned rest day relief employee, shall be restored to the Telegraphers' Agreement and performed only by employees entitled to such work under the agreement; and
3. The employees who were improperly removed from their assignments at Lexington, as well as all other employees resultantly displaced from their assignments, shall be restored thereto and compensated in full for all wages lost plus expenses incurred as provided in Rule 8 and other rules of said agreement for each day beginning with the dates their assignments were improperly declared abolished, or the date they were displaced, and continuing each day thereafter until they are restored to their respective assignments; and
4. All other employees who were deprived of work as a result of this violative act shall be paid for all wages lost.

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties to this dispute are on file with this Division of your Board and by this reference are made a part hereof.

Lexington, Kentucky is a station located on the Ashland Division of the Carrier. Prior to September 1, 1954 there was one position under the Telegraphers' Agreement classified as Ticket Agent, assigned hours 6:45 A. M. to

War II) when the ticket work grew to such volume that a ticket clerk to sell tickets during the daytime was put on. Later, when the ticket selling had gone back to its normal (or lesser) channels, the ticket clerk was dispensed with, and the work was again assigned to operators for performance in connection with their other telegraph office duties, such as blocking trains, handling train orders, telegraphing, etc.

In Docket CL-7851 involving Delaware, Ohio, on another division, the work went down to the extent that the agent-operator on the first trick could handle it all, and the agent-operator was there retained, abolishing the last daytime clerical position. Tickets have to be sold for two night passenger trains, and a clerk is employed to do the night ticket work. Thus, in that case the agent-operator does the ticket work during daylight hours and the clerk does such work at night; but it is obvious that in such case other work is attached, so that the principal work is as agent-operator, whereas in the instant (Lexington) case, plain ticket selling alone is involved, and there is no justification for a ticket agent in addition to the freight agent.

CONCLUSIONS

The Carrier has shown by its evidence that:

1. The ticket office work at Lexington Union Station has gone down to the point at which only one employe is necessary at any time.
2. Responsibility for such ticket office work has been vested in the freight agent, who has only 5 other employes under his supervision and direction.
3. Actual selling of tickets is assigned to ticket sellers under the Clerks' Agreement.
4. There is nothing in either the Telegraphers' Agreement or the Clerks' Agreement which makes ticket selling work exclusive to either craft. Such work is assignable to either craft according to work conditions.
5. The work conditions at Lexington Union Station are such that the ticket selling is properly assigned to ticket sellers under the Clerks' Agreement.
6. Such assignment of the ticket selling work at Lexington is fully consistent with assignment at other points and is consistent with the Carrier's position in other cases (Clerks and Telegraphers) involving such work.
7. The Telegraphers' Agreement has not been breached, and the claim should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the employe representatives.

OPINION OF BOARD: The issue before us is whether, on September 1, 1954, the Carrier violated the existing agreement with the Telegraphers when it abolished the position of Ticket Agent at Lexington, Kentucky, the Freight

Agent took over supervision, and the ticket clerk the routine duties. Neither is covered by the agreement.

Some question was raised about proceeding in the absence of the Brotherhood of Railway and Steamship Clerks; the record shows that notice was given in August, 1960 to that Organization which has failed to appear though it did inform the Secretary of this Board that it was not involved in this dispute. Since due notice has been given, and even acknowledged, the matter is now properly at issue and our determination will be binding on the parties.

Since the Scope Rule of the Agreement is general in character and does not undertake to enumerate the functions of the Ticket Agent embraced therein, the Claimants' right to the work, which they assert belongs to them, must be proved and that burden rests on the Employees. Award 6824—Shake; Award 9328—Johnson and Award 8838—McMahon.

Consequently there was offered in the record a list of the duties of the Ticket Agent comprising twenty-five items ranging from "Open office door at 6:45 A. M." to "Balance and make monthly reports". The Carrier in turn states that the Ticket Clerks performed much of the work involved in these items. At argument it appeared that the list should be characterized as "Office duties" because nearly all of the items, except perhaps the signing of the reports and one or two others, might be and constantly were being done interchangeably by the ticket agent and the ticket clerks.

The parties have neglected to furnish exact information as to the division of duties after the office of Ticket Agent was abolished. At that time there were two full ticket clerk or ticket seller positions. This has now been reduced to one full-time ticket seller and one hour of work per day by a clerk in the Freight Office when the morning train arrives. The Carrier strongly asserts that the ticket seller does the routine work and the Freight Agent does only supervisory duty.

In Award 5149—Boyd, it was pointed out that this Division of the Board (Award 4992—Carter) had adopted the principle that it is for the Carrier to determine the amount and character of supervision required, as a managerial prerogative, and also that such duties may be transferred to other supervisory officers who are entitled to perform them.

What was said by this Board in another case (Award 8662—Guthrie) is singularly appropriate:

"In fact, about the only remaining duty * * * immediately prior to the abolishing of the position, which might be argued to be an exclusive telegrapher responsibility, was that of a very minimal amount of supervision. This had come to be so insignificant that it cannot be said to bar the action taken by the Carrier."

In view of the showing that passenger revenues at this station were reduced from \$410,471.78 in 1945, to \$46,132.53 for the first three months of 1956, action was no doubt called for, hence the abolition of the office of Ticket Agent with the resulting supervision by the Freight Agent of the clerical work being performed by the same people in much the same manner as it had been before the office of Ticket Agent was abolished. Under these circumstances no violation by the Carrier has been proved and the claim should 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 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 30th day of January, 1961.