

Award No. 9778

Docket No. TE-8687

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 and Ohio Railway (Chesapeake District) that:

1. The Carrier violates and continues to violate the terms of the effective agreement between the parties when, on April 2, 1954, it improperly declared the position of Ticket Agent, Staunton, Virginia, abolished, without in fact abolishing the work of the position and transferred and assigned certain work belonging to the position to others not covered by the said agreement; and

2. The duties of said ticket agent position shall be restored to the scope of the agreement, the former incumbent and any other employees under the agreement improperly displaced from their regular positions as a result of this violation shall be returned to their respective former positions and compensated for any wages lost plus expenses incurred as provided in Rule 8 of the agreement; and

3. Any other employees who may have been adversely affected or deprived of work because of such violation shall be paid for wages lost and expenses incurred since April 2, 1954.

EMPLOYEES' STATEMENT OF FACTS: Staunton, Virginia, is a station located on the Clifton Forge Division, 56.2 miles east of Clifton Forge and 39.5 miles west of Charlottesville, Virginia. There is an agreement in effect between the parties with Rules effective September 1, 1949, and rates revised to February 1, 1951, which was reprinted April, 1951. Rule 1 of the Agreement is the Scope Rule. The work of Ticket Agent is covered by the Scope Rule. The Agreement contains the negotiated positions at Staunton, Virginia, at page 59, which are:

5. The Carrier has shown that it has assigned the ticket selling work at Staunton at all times fully in keeping with rules of both the Telegraphers' and Clerks' Agreements, in view of which the claim in this case should be denied in its entirety.

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

OPINION OF BOARD: The issue before us is whether, in April, 1954, the Carrier violated the existing agreement with the Telegraphers when it abolished the position of Ticket Agent at Staunton, Virginia, the Freight Agent then took over supervision and the ticket clerks the routine duties.

As the Freight Agent and Ticket Agent were covered by the agreement, the Ticket Agent claimed seniority and displaced the Freight Agent and became combination Freight and Ticket Agent. The ticket sellers were and are members of the Clerks' Organization.

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 assertions or statements were made by both parties touching on the subject. In fact such items appear on nearly twenty of the pages of the record before us.

For instance, the Employees assert the ticket agent prior to abolishing the office sold tickets with the ticket clerks and also made up ticket reports, answered telephone, marked the bulletin board and performed "other sundry duties" incidental to the passenger station; that the duties of the ticket agent went to the Freight Agent in part, and in part to Arehart, covered by the Clerks' agreement before and after action of the Carrier.

Employees say the reports formerly completed "under the supervision of the Ticket Agent" are now made by the ticket clerk who prepares them for the signature of the Freight Agent, after which the Freight Agent checks them for accuracy and affixes his signature. That during 1953 supervision of ticket work required overtime and the ticket agent worked six days a week. The present Freight Agent works only five days a week.

Employees claim that the Carrier asserts that the only work exclusively performed by the ticket agent that was transferred is the "supervision" which was transferred to the Freight Agent. Employees deny this and contend that a great part of the work was transferred to the Freight Agent.

On the other hand, Carrier through its Assistant Vice President in charge of Labor Relations, stated in a letter to the General Chairman that:

"Prior to April 3, 1954, the work of selling tickets, handling reports in connection therewith, etc., was performed by the ticket agent under the Telegraphers' agreement and by the two ticket clerks under the Clerks' agreement."

Carrier says the work is supervised by the combination Agent position under the Telegraphers' agreement and there are three ticket clerks (one having been added in January, 1955) under the Clerks' agreement to do the ticket selling and other detail work.

Answering Employees say that Carrier did assign a portion of the work to another position under the Telegraphers' agreement but the "major portion" to a position not under the Telegraphers' agreement, and refer to Carrier's statements as vague and ambiguous.

Carrier then discusses the making of reports before and after the change to show that there is practically no change in their handling; also emphasizes that the combination agent does give adequate supervision just as the ticket agent did.

From the above it is evident that prior to the abolishment of the ticket agent position the work of selling tickets, handling reports and such work might well be embraced by the term suggested at argument of "General Ticket office duties", the ticket agent signing the report and the rest of the work being more or less interchangeable. After the order to abolish, the combination Agent, covered by the Telegraphers' agreement, performed the supervisory duties and the ticket clerks, covered by the Clerks' agreement, resumed ticket selling and other routine work.

Under these circumstances the Employees can hardly complain about the supervisory duties being assigned to a member covered by their agreement.

In Award 8537-Coburn, it was said:

"* * * it was no violation of the agreement for Carrier here to abolish the position of ticket agent (see awards 4992 and 5318) and assign the supervisory duties thereof to another employe, the Agent, because this was not a transfer of work from one agreement to another."

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."

As to performance of the routine duties by the Ticket sellers or clerks (Award 6363):

"This Board has consistently held in many cases that when a position has been abolished, as here, and the remaining duties, sometimes performed by telegraphers, are of a clerical nature, it cannot be said that such clerical duties belong exclusively to the Telegraphers, nor does such right exist through custom and practice, where the major duties of the position have been abolished and those remaining are of a clerical nature."

See Awards 5719, 5803, 5867 for similar statements.

In Award 8537—Coburn, it was said:

"There remains the question of the assignment of clerical duties to other employes admittedly not covered by the Agreement. These can not be held to be duties which members of the Telegrapher craft have the exclusive right to perform either by custom or under the agreement.

In Award 7073—Carter, it was pointed out, in approving the action of the Carrier, that:

"All the telegrapher's work is being performed by a Telegrapher and the clerical work is being performed by Clerks."

In view of the showing that passenger revenues at this station were reduced from \$414,333 in 1945, to \$143,905 in 1953 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 ticket office was abolished. Under these circumstances no violation 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 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 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.