

Award No. 10301

Docket No. CL-10214

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

George D. Bonebrake, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(a) Carrier violated the current clerical Agreement when, effective May 1, 1957, they abolished two (2) positions, the Cashier-Clerk and the Chief Yard Clerk at Waurika, Oklahoma, and reported they were assigning the duties of calling train and engine crews, checking the Yard, checking Trains, Weighing Cars, preparing bills for various trains, and making various Cashier and clerical Yard Reports, to the Agent-Operator and the second and third trick operators, employees not covered by the clerical agreement.

(b) Carrier shall be required to restore positions and work of the Cashier and Chief Yard Clerk at Waurika, Oklahoma, which were improperly removed from the scope and rules of the current clerical Agreement, to employees covered thereby. W. B. Crow, Cashier-Clerk, rate \$363.35; H. W. Dunn, Chief Yard Clerk, rate \$374.14; and Relief Clerk, Rolla Weatherly, shall each be paid for eight (8) hours per day in accordance with their claims filed, effective May 1, 1957, until the violation has been corrected. *Also any other clerical employees who were adversely affected by this violation of the clerical Agreement shall be reimbursed, retroactive to May 1, 1957. (The above rates to be adjusted in accordance with Cost-of-Living increase May 1, 1957, and all other increases thereafter.)

EMPLOYEES' STATEMENT OF FACTS: Waurika, Oklahoma, is a Terminal on the Chicago, Rock Island and Pacific Railroad Company, and the train Yard is located about one mile south of the Passenger Station. The Agent and Operators are located in the Passenger Station.

*NOTE: Reparation due employees to be determined by joint check of Carrier's payrolls and such other records that may be deemed necessary to establish proper claimant(s).

In the instant case the clerical duties assigned to the operator cannot be said to be beyond a reasonable proximity of the operator's office, although he was required to go out into the yard to check and do work. It is noticeable that his office was located right in the yard itself and that going out to make a check could be said to be within reasonable proximity of his office. The mere fact that he was required to go outside of his office to do this is not in contravention of Award 636, as the facts in that case were quite clear and different than in the instant case."

The above dispute involved the abolishment of a yard clerk position at North Little Rock, Arkansas, and having the work, including the calling of crews, performed by an operator.

We also wish to call your Honorable Board's attention to Awards 28, 30, 33, 36, and 41 of Special Board of Adjustment No. 171 on the Illinois Central Railroad Company.

In the instant case, monopolistic rights to certain classes of work are sought and efforts are made to draw rigid class and craft lines merely for the purpose of increasing employment. The result is destructive of efficiency, economy and productivity of the railroad industry, which has now too many restrictions enforced by class and craft lines. Some of those we now have should be eliminated. Certainly, no more should be added.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

OPINION OF BOARD: The claim is that the Carrier violated the effective Agreement between the parties by abolishing at its Waurika, Oklahoma, station the positions of Chief Yard Clerk and Cashier-Clerk, and assigning the duties formerly performed by them to Employees not covered by the Agreement. The duties assigned, which Petitioner alleges constituted a violation of the Agreement, were calling train and engine crews, checking the yard, checking trains, weighing cars, preparing bills for various trains, and making various cashier and clerical yard reports. The assignments were to the Agent-Operator and the 2nd and 3rd trick operators. Group 1 of Rule 1—Section 1, Scope Rule—lists, among others, Chief Clerks, Clerks, Station Baggage-men, Ticket Clerks (sellers), Train and Engine Crew Callers, and Waybill Sorters. As stated in its brief (p. 7):

"It is the Employees' position that clerical work, particularly that which is specifically outlined in the Scope Rule of the agreement, belongs to the clerical employees covered by the Agreement; and that Carrier does not have the right to abolish clerical positions and assign the duties thereof to others beyond the Agreement."

Carrier's contention, in essence, is that because of decreased volume of business and train service at its Waurika, Oklahoma station, the positions in question were abolished; that such decrease had been developing for a substantial period of time and that the work-load at the station had dwindled to such a point that the employment of more than three telegraphers on a round-the-clock basis was not necessary or justified; that the telegraphers—one on each shift—could and did handle all the work involved.

No attempt will be made to set-forth herein all the facts which appear in the record, but a review thereof discloses that as far back as 1904, the station, which is an away-from-home terminal for freight and passenger

crews operating into and out of Waurika, was operated by an Agent, a day operator and a night operator. Three years later one clerical position and one station helper position were added to the force. In 1908, a new yard was built and a sizeable station force was established at both the passenger station and the yard. Traffic continued to increase for a while, but in 1929 it had, and thereafter, continued to decline. Decreases in personnel were made and by May 1, 1957, the remaining two clerical positions—which are the subject of this dispute—were abolished. The duties which the incumbents thereof had theretofore performed, were assigned to, and have since been performed by the three telegraphers—one for each shift. There are no clerical Employees at the station. In other words, it is Carrier's position that the work-load had decreased to such an extent that the duties—at least to the satisfaction of Management—could be performed, as had been done in the past, by the telegraphers; that what is, or is not, necessary to perform the required work is up to the Carrier, not the Employees involved.

The gist of Petitioner's contention is that sufficient work remains at the station—they say a full eight hours a piece by both Employees—and that the positions should not have been abolished. Carrier estimates the clerical duties of the positions abolished took approximately 3 hours and 50 minutes per day for the Cashier-Clerk, and 5 hours and 15 minutes per day for the Chief Yard Clerk.

As we see it, much clerical time is involved and whether it can be and is satisfactorily handled without the employment of other Employees, is a managerial or operational problem. It is not up to the Board to say what in our opinion constitutes or does not constitute, efficient operation. Our opinion might coincide, or not coincide, with what constitutes sufficient performance. We are not charged with that responsibility. We are, however, concerned with whether or not there has been a violation of the Agreement. If there has or has not been, regardless of our feelings as to what we think is good technique, we will so state. Here, Petitioner's claim is bottomed on the contention that the work—particularly that of a position specified in the Agreement—belongs exclusively to Employees covered thereby, and that the assignment and performance of the duties thereof by Employees covered by a different Agreement, even though the jobs were abolished, constitutes a violation.

It should be kept in mind that the jobs were abolished. If the incumbents thereof remained on the job and exclusive duties of the positions were simply transferred to others, an entirely different problem would exist. That is not the case here, however. As stated in Award 615:

"It has always been the rule that telegraphers may be assigned clerical work without limit except their capacity to fill out their time when not occupied with telegraphy. For obvious reasons in diminution of force, a clerk cannot undertake or be accorded telegrapher's duties but the converse is not true; on the contrary, where two positions are involved, one, that of a clerk, and the other, that of a telegrapher, and one is to be abolished, the telegrapher—if any telegraph duties remain—has the absolute right to the position including the assumption of the remaining clerical duties."

It would serve no good purpose, and would unduly lengthen our decision herein, to quote from or refer to all pertinent awards which we have heretofore issued. Both parties have been very helpful in calling them to our attention. They have all been considered, but in the final analysis, each, as well as this case, must stand on its own feet. We have so treated this dispute, but in

concluding, we refer to Award 4559 which involved the identical parties as herein, in which the following statement in Award 4477 is quoted:

"When the work of clerks exceeds that which the telegrapher can perform and it becomes necessary to increase forces, the excess clerical work belongs to clerks and must be assigned to them. If the work recedes to the point where the telegrapher can perform it all, it is the clerks and not the telegraphers which must be cut off when telegraphic work remains to be performed."

After considering the entire submission from all angles, we hold that the Agreement has not been violated.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Date at Chicago, Illinois, this 16th day of January, 1962.