

Award No. 10628

Docket No. CL-9625

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

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

**THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated and continues to violate the Clerks' Rules Agreement when on June 11, 1956 it assigned work which had prior to that date been assigned to and regularly performed by the occupant of clerical Position No. 190 at Seymour, Indiana (a position and employee covered by the Clerks' Rules Agreement) to the Agent-Operator, an employee outside the Clerks' Rules Agreement.

2. Carrier shall be required to return the work which was a part of clerical Position No. 190, now being performed by the Agent-Operator, to employees covered by the Clerks' Rules Agreement and shall compensate Employee F. E. Pickerell for three (3) hours at the time and one-half rate of Position No. 190 for June 11th and each work day subsequent thereto until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: A check of the rosters beginning January 1, 1946 shows two positions covered by the Clerks' Rules Agreement in effect at Seymour, Indiana—clerical Position No. 190 and Trucker Position No. 68.

The roster of July 1953 shows the trucker as being furloughed, as does the roster for January and July 1954.

There is no reference to a trucker position or a trucker on the roster as of January 1955, and this is true on rosters subsequent to that date.

On all of these rosters Employee F. E. Pickerell is shown as the regular occupant of clerical Position No. 190, indicating his continued employment on that position.

Prior to June 11, 1956 the hours of assignment for Position No. 190 were from 7:00 A. M. to 4:00 P. M. Monday through Friday.

Carrier except the General Chairman has directed attention to his statement, contained in his letter of appeal to Mr. Downing, alleging that the work which the clerk had previously performed between 7:00 A. M. and 10:00 A. M. was assigned to and performed by the agent-operator.

POSITION OF CARRIER: When the Carrier rearranged the assigned hours of the station clerk's position, which was strictly in conformity with the provisions of the schedule rules, arrangements were made to have the station clerk continue to perform the station work which he had previously performed. Even though prior to this change the Agent had always performed work in connection with checking and handling LCL freight, as well as any other items of station work, in order to avoid any basis for a contention that the Carrier had transferred station work from the clerk, arrangements were made to have the pick-up and delivery contractor hold his deliveries until 10:00 A. M.

The station clerk continues to perform the station work which he previously performed prior to the change in his assigned hours and no station work properly that of the station clerk has been transferred to the station agent.

Surely it can be said that the agent is not unfamiliar with the handling of the station work at his station. We direct attention to Carrier's Exhibit "E", which is a statement of Agent A. R. Gee, in which he clearly indicates that since the change in the assigned hours of the clerk he has not performed any work which he did not previously perform.

It is the Carrier's position there has been no showing whatever that there has occurred any violation of the schedule rules and there is no basis for the claim presented.

We, therefore, respectfully request that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Since at least 1946, Claimant Pickerell occupied Clerical Position No. 190 at Seymour, Indiana, with hours of work 7:00 A. M. to 4:00 P. M., Monday through Friday. The other employee at the station was the Agent-Operator, a position and employee outside the Clerks' Agreement. On June 6, 1956 Carrier issued a Bulletin in effect changing assigned hours of Position No. 190 to 10:00 A. M. to 7:00 P. M. and stating its principal duties to be billing, expensing, checking industry tracks, making of interchange, and various duties as assigned by the Agent. Petitioner described the duties in the same general manner, but substituted "checking and trucking freight" for the last phrase, and this apparently was the principal area of work over which the dispute arose.

For many months previous to June 6, 1956, Pickerell received a call each day, working from 7:00 P. M. to 8:00 P. M. when he delivered waybills to connecting lines and worked on interchange reports. The change in assigned hours permitted him to perform during regular hours work he previously performed on overtime.

Pickerell presented timeslips claiming three hours at the penalty rate, payment was declined and on appeal Carrier adhered to its position.

Petitioner maintained that the change in assigned hours had the effect of transferring to the Agent-Operator the work the Clerk previously performed between 7:00 A. M. and 10:00 A. M., and that this violated the Scope Rule of the Agreement between the parties effective September 1, 1949, which in the third paragraph of Rule 1(e) states:

"Positions within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57."

Carrier maintained there was no violation, for the following asserted reasons. First, the Agent (Agent-Operator) had always performed work in connection with checking and handling LCL freight, as well as other items of station work, and the station duties described above were not assigned exclusively to the Clerk. Second, no station work properly that of the Clerk was transferred to the Agent. The latter wrote to the Trainmaster on August 24, 1956, incorporating these reasons, and copy was furnished to Petitioner. Finally, the Carrier asserted, it made arrangements to defer each day all work assigned to the Clerk until his 10:00 A. M. starting time; in fact, arrangements were made to have the pickup and delivery contractor hold his deliveries until 10:00 A. M. in order that there be no transfer of work from the Clerk to the Agent before that hour.

This matter came to the Board from an exchange of assertions by the parties which were not implemented on the property by disclosed facts. In correspondence between them, Petitioner claimed its information did not agree with Carrier's contention that no work to which the Clerk was entitled was transferred to the Agent; and Carrier asked Petitioner to state specifically what information it had which was contrary to what the Carrier had furnished and what evidence it had that such information was incorrect. Also, Petitioner requested a joint check of the facts of the situation, which Carrier refused. Then, before the Board, Petitioner asserted (1) a transfer to the Agent of Clerks' functions was borne out by the fact the freight house continued open for receipt and delivery of freight between 7:00 A. M. and 10:00 A. M., and (2) it had been informed the contract drayman did not agree to hold freight up until 10:00 A. M. Then also, Carrier (1) confirmed the latter as true; (2) presented a schedule of receipts and deliveries of LCL freight in a ten-day period over a year after the hours change, showing receipts on eight days and approximately two-thirds of total receipts occurring before 10:00 A. M., and deliveries on two days, both before 10:00 A. M.; and (3) asserted one of the Clerk's first duties previously was to make a check of the tracks, generally requiring an hour or more, and the Agent handled exclusively any LCL freight received or delivered during this period of absence by the Clerk.

Even if the Board considers an amplification the material first advanced in presentations to it, still the record does not provide adequate specific factual information, especially as to the nature and extent of clerical work allegedly performed regularly by each employee before and after the hours change. The Board therefore concludes that the claim must be dismissed.

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 there is inadequate data presented by the parties to enable Board action.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1962.