

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) Carrier violates the current Clerks' Agreement when it requires Telegraph Operators at Sweetwater Passenger Station to vacate their positions and engage in the loading and/or unloading of mail and/or baggage on and off passenger trains operating into Carrier's station at that point; and,

(b) Carrier shall now assign this work to the scope and operation of the Clerks' Agreement; and,

(c) O. O. Berry shall now be paid eight (8) hours pro rata at M&B rate of pay for each day, Monday through Friday, from February 16, 1958, forward, until the violation is discontinued; and,

(d) The senior off-duty Class 3 employe at Sweetwater, each Saturday and Sunday (*) shall be paid eight (8) hours at time and one-half at M&B Handler rate, from February 16, 1958, forward, until the violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 16, 1958, the Carrier maintained, among others, the following positions at its Freight and Passenger Stations at Sweetwater, Texas:

Position No.	Title	Assigned Hours		Number of Days Per Week
		From	To	
425	Telegrapher	8:30 P.M.	5:30 A.M.	7
666	Ticket Clk-Baggageman	1:30 P.M.	10:30 P.M.	7

* As may be reflected by joint check of Carrier's records.

for penalties in the instant dispute is excessive in that it not only seeks the payment of eight hours' compensation for the alleged improper performance of only an average of thirty minutes' work each day but completely disregards the repeated holding of your Honorable Board that the performance of work on an abolished position by someone other than those entitled to perform it does not require the establishment of the abolished position and only entitles the claimant to be reimbursed for the time actually devoted to the complained-of work. See, for example, Awards 1300, 3583, 3906, 6528, 6544 and 7222. Furthermore, Part (d) of the Employees' claim also seeks the payment of time and one-half rates on Saturdays and Sundays in complete disregard of the well established principle, consistently recognized and adhered to by the Board, that the right to work is not the equivalent of work performed under the overtime and call rules of an agreement. In this respect, see Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, and 5967.

CONCLUSION

First, the Carrier desires to repeat that Part (d) of the Employees' claim in the instant dispute is not a proper claim, by reason of the fact that the claimant has not been identified, and that portion of the claim should be barred from further consideration by the Board.

Second, the Carrier respectfully asserts that the Employees' claim is entirely without merit or support under any governing agreement rule in effect between the parties here involved and should be denied in its entirety.

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

OPINION OF BOARD: The Scope Provision of the Agreement before us, insofar as material herein, reads:

"ARTICLE I

"Section 1.

These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

"Class 1: Clerks —

Clerical workers and/or machine operators.

"Class 2:

Other office and station employees, such as assorters of waybills, tickets, car movement slips, etc., office boys, messengers, chore boys, train announcers, gatemen, station helpers, baggage and parcel room employees, train and engine

crew callers, operators of certain office or station appliances and devices, and telephone switchboard operators.

"Class 3:

Employes such as elevator operators, janitors, station, platform, warehouse, transfer, storeroom, stock room and team track freight or material handlers or truckers, and others similarly employed."

THE FACTS

At Carrier's Passenger Station at Sweetwater, Texas, the following positions existed, among others, prior to February 16, 1958:

Position No.	Title
425	Telegrapher
666	Ticket Clerk-Baggage man
433	Mail-Baggage Handler
434	Mail-Baggage Handler

Other than the Telegrapher position, the named positions were covered by the Clerks' Agreement. Under the Scope Provision, quoted *supra*, Position No. 666 was in Class 1; and, Positions Nos. 433 and 434 in Class 3.

Effective February 16, 1958, the position of Ticket Clerk-Baggage man (No. 666) was abolished. Carrier's Agent at Sweetwater assigned to the Telegrapher position the handling of mail and baggage onto and off passenger trains which had formerly been performed by the occupant of the abolished position — the record indicates this amounted to 30 minutes work per day which was accomplished within the Telegrapher's regularly scheduled working hours. The Mail-Baggage Handlers positions were in no way affected by the abolishment of Position No. 666.

CONTENTIONS OF PARTIES

Clerks' contend that "the handling of mail and baggage onto and off of passenger trains, . . . had never theretofore been assigned to employes not covered by the Clerks' Agreement;" and, such work, here involved, was within the scope of its Agreement and should have been assigned, specifically, to Class 3 available extra employes.

Carrier contends that:

- (1) The work involved had never been "exclusively" performed by clerks on its system;
- (2) Historically the work had been performed by both telegraph service employes subject to the Telegraphers' Agreement and employes subject to the Clerks' Agreement; and
- (3) This Division has repeatedly held that employes covered by the Clerks' Agreement do not have the exclusive right to the performance of clerical duties.

RESOLUTION OF ISSUES

The Scope Rule lists classes of employes for whom the Clerks' Agreement governs hours of service and working conditions. It does not describe work of any kind. This Board has consistently held that in interpreting this type of Scope Rule it is necessary to rely upon extrinsic evidence in order to determine whether the work in question has been reserved traditionally and customarily to the positions named in the Agreement; and, also, the burden of producing such evidence is upon the party alleging violation of the Agreement. See, for examples, Awards No. 6824, 7322, 7338, 9552, 9610, 9971.

Clerks have failed to adduce clear and convincing evidence that the work, here in question, has by tradition, historical practice and custom been exclusively performed by Clerks on Carrier's system. We will deny the Claim.

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 24th day of July 1963.