

Award No. 12047
Docket No. CL-12055

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

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

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

1. The Carrier violated the Clerks' Agreement at Lanark, Illinois when on Saturday, August 15, 1959, it assigned work regularly performed by the occupant of clerical Position No. 39 ½, Monday through Friday, to the Agent-Operator, an employee outside the scope and application of the Clerks' Agreement.

2. The Carrier shall be required to compensate Employee R. Kehl, the regular occupant of Position No. 39 ½ for a two (2) hour call at the overtime rate of Station Clerk Position No. 39 ½ for Saturday, August 15, 1959.

EMPLOYEES' STATEMENT OF FACTS: Employee R. Kehl is the regularly assigned occupant of Clerk Position No. 39 ½ at Lanark, Illinois. Position No. 39 ½ is assigned from 10 A. M. to 7 P. M. Monday through Friday, with Saturday and Sunday as rest days. The Saturday and Sunday rest days are unassigned days.

Among the duties assigned to Clerk Position No. 39 ½ is the billing of cars. (See copy of Carrier's Bulletin #5 dated February 2, 1959, copy of which is attached as Employees' Exhibit "A".) The billing of all cars is work which is regularly performed by the occupant of Position No. 39 ½ Monday through Friday each week.

Other duties which are regularly performed in whole by the claimant during his hours and days of assignment are:

2 days per week, i.e., Saturday and Sunday, the station work at Lanark is performed exclusively by the Agent.

In view of the information set forth in the preceding paragraph and in view of the fact that the first Clerks' Agreement did not become effective (January 1, 1920) on this property until almost 17 years after the first Telegraphers' Agreement (April 1, 1903) plus the fact that Clerk Position No. 39½ was not established until October 29, 1945 or, in other words, 42 years after the first Telegraphers' Agreement became effective it cannot properly be said that when the Agent (a fully covered employe within the scope of the Telegraphers' Agreement) spent less than 15 minutes billing a car on Saturday, August 15, 1959, which is work fully covered employes within the scope of the Telegraphers' Agreement at Lanark, Illinois have been performing in whole or in part since April 1, 1903 and are continuing to perform, that there occurred a violation of the Clerks' Agreement.

The work here in question, i.e., the billing of a car, is not exclusive to employes covered by the Clerks' Agreement. The Clerks' Organization does not, as has been conclusively shown, have exclusive claim to billing work or any other station work at Lanark, Illinois.

The Carrier wishes to direct your Board's attention to Third Division Awards 9032, 9219 and 9220 which we feel support the Carrier's position in the instant case.

There is no basis for this claim.

There has been no violation of the schedule rules.

The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employes and made a part of the question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: At the station at Lanark, Illinois, Carrier maintains two employes, occupant of Clerk Position No. 39½ who is on duty Monday through Friday with rest days on Saturday and Sunday, and a Agent Operator who holds a seven-day position. On Saturday, August 15, 1959, when the Agent was alone on duty, he performed the work of billing a carload of goods upon its arrival. Mr. R. Kehl, who holds Clerk Position No. 39½, makes claim that Carrier violated the Clerks Agreement in assigning the work of billing to the Agent on duty who is not covered by the Clerks Agreement.

Claimant takes the position that the billing duties belong to him exclusively since he performs that work on Monday through Friday. He argues that he is entitled to this work because billing was listed as one of the principal duties of Clerk Position No. 39½ when the position was bulletined. On the other hand he points out that the regular duties of Agent do not include billing. Petitioner claims that he was entitled to be called for the work under Rules No. 28 and 34.

The assertion that billing is performed exclusively by the occupant of Clerk Position No. 39½ is denied by Carrier. Claimant relies upon the bulletin as proof that this work is reserved to him exclusively. The purpose

of the bulletin is to advertise the position. Although it lists "expensing and billing" as one of the principal duties in the position, it does not expressly provide that this work is reserved to this employe exclusively. In our opinion the evidence is not competent and adequate proof that Carrier conferred this work exclusively upon the Clerk. The record also fails to furnish evidence to sustain the contention that the Agent did not perform billing on the five days when both he and the Clerk were on duty.

The billing work which arose in connection with the arrival of a carload of goods on Saturday was part of the station work for that day. The Agent may perform this work during the week; and, therefore, it is reasonable to expect that when as the only employe on regular assignment at the station he takes on this work.

Rule No. 28, which concerns work on an unassigned day, is not applicable because the Agent was carrying on his regular assignment and there was no need for notifying another employe on a call basis as specified in Rule No. 34.

We do not accept the conclusion of Petitioner that he has the exclusive right to be called to handle billing on Saturday, his rest day, because he performs such work on week days. Petitioner has not shown that he performed this work on his rest day nor has he shown that the Agent did not engage in billing work on his regular assignment which extends over the Clerk's day of rest. On the rest day of the Clerk at a location where Carrier maintains both an Agent and a Clerk, the employer has the right to assign to the Agent work under the Clerks Agreement that is not reserved exclusively to the Clerks. This position is consistent with Awards No. 8871 and 8256. We, therefore, hold that the Agreement was not 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 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 10th day of January 1964.