

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Michael J. Stack, Jr., 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 that:

1. Carrier violated and continues to violate the agreement between the parties when, effective October 26, 1957, it arbitrarily and without negotiation removed from the scope of said agreement and from the employees covered thereby work of handling ticket sales, mail and baggage and related work at Paintsville, Kentucky, and required or permitted employees not covered by said agreement to perform the work.

2. Carrier be required to restore the work of handling ticket sales, mail and baggage and related duties at Paintsville, Kentucky, to employees covered by the agreement.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Paintsville, Kentucky, is a station on this Carrier's lines. There are separate freight and passenger stations located several city blocks apart. The present passenger station was placed in operation on December 31, 1929.

Commencing with December 31, 1929, the force at the passenger station consisted of three telegraphers, under the Telegraphers' Agreement, performing continuous service twenty-four hours per day, seven days per week. The duties of the positions were handling of train orders, blocking trains, transmitting and receiving reports and messages, selling tickets, handling baggage and mail, and other related work.

The office in which the telegraphers worked then, and work now, is a combination telegraph office and ticket office, so that telegraphers did not (and will not now) have to leave their office to perform any functions in connection with the selling of tickets.

5. CARRIER WILL THEN BE ABLE TO PERFORM ITS FUNCTIONS WITHOUT CONFUSION.

The Carrier has shown that contrary awards in the present situation are resulting in confusion and imposing an unwarranted condition upon the Carrier and its employees. To render a sustaining award in the instant case without relaxing the control under Award 8079 will bring chaos, because the Carrier has clearly not negotiated any overlapping rules as between the Clerks and the Telegraphers. As shown by the Carrier's response in Award 8079 (p. 11), as early as January, 1920, the Carrier's Labor Relations Department was being admonished to guard against any overlapping of the rules for Clerks and Telegraphers, and the Carrier has always endeavored to do just this.

A sustaining award in this case without relaxation of the doctrine set up by Award 8079 will result in an impossible situation, as the Carrier will be faced with the Board having said that the same work belongs to both crafts, while only one craft can perform it.

The Carrier urges, therefore, that the Board issue a clarifying award which will prevent the Carrier from being compelled to hire or pay two employees to do the same work, a condition entirely repugnant to the public interest on which the railroad industry depends for its very existence.

CONCLUSIONS

The Carrier has shown that:

1. A perilous situation is brought about by contrary awards of the Third Division in connection with Rule 1 (b) of the C&O Clerks' Agreement.
2. The C&O Trinity, Ky., case (Award 4348) shows and affirms the traditional and historical allocation of station and agency work between Telegraphers and Clerks.
3. A clarifying award which will preserve the traditional and historical allocation of work between clerks and telegraphers should be made in the instant case which will rectify the situation and prevent further confusion.

OPINION OF BOARD: This case is illustrative of the problems created by the failure to have all interested parties before this Board when it acts on one facet of a three facet situation.

We decided in Award 8079 that the Carrier breached the agreement when it abolished the position of ticket clerk represented by BRC and assigned that work to the telegraphers represented by ORT.

Briefly, the underlying facts were these:

Beginning in 1929 the telegraphers at Paintsville had manned the passenger station, the duties of which included the sale of tickets.

With the advent of World War II, passenger business increased to the point where the telegraphers could not handle their ticket selling and related duties, and a ticket clerk was added. With the end of World War II, passenger

business declined to the point where Carrier abolished the position of ticket clerk and returned, so it thought, the situation to status quo anti bellum.

When the affected BRC employees protested, we found in Award 8079, *supra*, a violation of Rule 1 (b) which provides:

"Positions within the scope of this Agreement belong to employees herein covered and nothing in this Agreement shall be construed to permit the removal of such positions from the application of these rules except as (permitted by other rules not here applicable)"

We have construed "positions" in this context to mean "... 'positions' which are subject to the agreement are protected to the craft by the agreement, and since 'work' is of the essence of a position, such work which is the manifestation of the position and the identity of it is likewise protected to the craft" 7372.

In discharge of the imperatives of our award, the Carrier made monetary payments totaling \$15,019.93.

It made arrangements not here important for the Clerks to cover the sale of tickets. It issued the following instructions to the telegraphers at Paintsville:

"... telegraphers will discontinue—

Checking baggage

Selling tickets or performing any work in connection with ticket selling or reporting

Discontinue giving the public any information relative to the sale or price of tickets ..."

We believe that this is a broad reading of our Award 8079, but it is not an unreasonable one. The result, however, is to diminish the sum total of work which otherwise would be available to the ORT, a result with which we are not happy, although permissible, under our prior awards. So long as the lost work is merely incidental to the performance of the regular duties of the telegraphers, there is no violation of the Agreement. 8330.

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 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 24th day of January 1964.