

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

**PARTIES TO DISPUTE:**

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

**SOUTHERN PACIFIC COMPANY  
(Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-4813) that:

(a) Carrier violated and continues to violate the Rules of the Clerks' Agreement at Deming, New Mexico, when effective with the close of shift June 25, 1959, it abolished Position No. 2, Cashier, and concurrent therewith assigned duties thereof to the Agent and 1st Telegrapher, employees not covered by the Agreement; and,

(b) That the involved clerical work be restored to the scope and operation of the Clerks' Agreement; and,

(c) That R. O. Robin and/or his successors, if any, be compensated eight (8) hours at the rate of position of Cashier for June 26, 1959 and for each and every day and date thereafter until the Agreement violation is corrected.

**EMPLOYEES' STATEMENT OF FACTS:**

1. There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, which Agreement (hereinafter referred to as the Agreement) is on file with this Board and by reference thereto is hereby made a part of this dispute.

2. On June 25, 1959, and prior thereto, the station force at Deming, New Mexico, consisted of the following positions:

Position No.	Title	Assigned Hours
1	Agent	From 9:00 A. M.
2	Cashier	8:00 A. M. to 5:00 P. M. Daily (relieved on rest days)
3	Revising & Bill Clerk	2:00 P. M. to 11:00 P. M. Daily (relieved on rest days)

would be done or clerical position eliminated, is and always has been, a function not limited by Clerks' Agreement since both Agents and telegrapher-clerks have historically performed clerical work as a part of their assignment.

The handling given by Carrier in this case could in nowise be considered frivolous. Action was required and Carrier asserts that it was not limited by any provision of the current agreement when in the interest of economy and efficiency in its operation it abolished Cashier's Position No. 2 at Deming and re-arranged the work at that station in the manner described.

### CONCLUSION

The claim in this docket is entirely lacking in either merit or agreement support, and Carrier requests that if not dismissed, it be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Prior to June 26, 1959, the station force at Deming, New Mexico, consisted of six employes: one Cashier, one Revising and Bill Clerk, both being covered by the Clerks' Agreement; one Agent and three Telegrapher-Clerks, the latter four covered by the Telegraphers' Agreement.

On June 26, 1959, the position of Cashier, held by Claimant Robin, was abolished. Some of his duties were assigned to the Revising and Bill Clerk, some to the First Telegrapher, and many of them to the Agent.

The Petitioner contends that the assignment of duties of the abolished position to other than employes covered by the Clerks' Agreement constitutes a violation of said Agreement and demands restoration of the work to the scope and operation of that Agreement and restitution to the Claimant and/or his successor of time and wages lost as the result thereof.

Unless it is shown that in the manner of so doing, it has violated express provisions of the Agreement, the Carrier has, in general, the right to abolish positions and re-assign the former duties thereof to others when in its business judgment its needs are best served by fewer employes. Awards 5331, 6946, 7849. In the instant matter, the only question which arises is whether the Carrier assigned any or all of the duties in such a way as to deprive the Claimant of work reserved to him by the Agreement.

Under the general Scope Rule here present, the Carrier also has the right to assign clerical duties to telegraphers, as well as to others, provided it does not transfer from clerical employes work which had customarily, traditionally and historically been exclusively performed by employes coming under the Clerks' Agreement. Awards 806, 1418, 2138, 2334, 9257, 10164, 10506.

The determinative question before us is: Was the re-assignment of work to Agent and Telegrapher a denial of said work to employes covered by the Clerks' Agreement who had enjoyed exclusive assignments to it by custom, tradition and practice?

We find on this subject that the transferred work had in fact been exclusively performed for many years by employes coming under the Clerks' Agreement, and that it was contemplated by the parties to the Agreement that it would continue to be performed by the employes who are the subjects

of said Agreement. Consequently, the transfer of this work to employes outside of the scope and operation of the Clerks' Agreement is a violation of said instrument.

**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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That the Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1964.

#### DISSENT TO AWARD NO. 12822, DOCKET NO. CL-12190

Award No. 12822 is in error for the reason that Awards 806, 1418, 2138, 2334, 9257 (apparently 9757 intended), 10164 and 10506, cited by the majority, do not support the proposition that under a general scope rule, as here, the Carrier has the right to assign clerical duties to telegraphers or to others as long as it does not transfer from clerical employes work which had customarily, traditionally and historically been exclusively performed by employes coming under the Clerks' Agreement. Rather, the awards cited support the proposition that employes other than clerks may and do perform clerical work without violation of the Clerks' Agreement.

The Award is also in error for the reason that it ignores the fact that the Agreement is system-wide in its application and that the Petitioner is required to prove practice throughout the system if it is to prevail. This proposition has long since become self-evident by the awards of this Division, many of which were cited to the Referee in this case.

For these reasons, we dissent.

G. C. White  
D. S. Dugan  
P. C. Carter  
W. H. Castle  
T. F. Strunck