

Award No. 12960
Docket No. CL-12250

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-4815) that:

(a) Carrier violated and continues to violate the Rules of the Clerks' Agreement at Bisbee, Arizona, when effective with the close of shift August 19, 1959, it abolished Position No. 3, Chief Clerk, and concurrent therewith assigned all the duties thereof to the Agent and 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 Chief Clerk for August 20, 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 employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, 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. Bisbee, Arizona, is situated on Carrier's Bisbee Branch of the Rio Grande Division, a distance of 5.7 miles from Bisbee Junction, a main line station, on the same operating division. On August 19, 1959, the station force at Bisbee consisted of the following positions:

ment since both Agents and Telegrapher-Clerks have historically performed clerical work as a part of their assignment.

Carrier has maintained an Agent and a Telegrapher-Clerk (classified in this case as a Telegrapher-Ticket Clerk-Cashier) at Bisbee for many years, both prior and subsequent to the effective date of current agreement and prior and subsequent to Award 615. This is entirely within management's prerogatives and likewise proper and logical, since the agent is out of the office a great deal, being gone most of the day approximately twice a week and sometimes more often, on trips to Fort Huachuca and also handling many other duties which may be appropriately handled by an Agent outside the office. All of these absences from the office in connection with assigned duties of the Agent established the desirability of the remaining employe being an employe who could handle both telegrapher and clerical duties, in accordance with long-standing practice on the property and Awards 615 and 6269 of this Division involving the same parties as in the instant case.

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 Chief Clerk's Position No. 3 at Bisbee 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: The Petitioning Organization and the Carrier are the same in this matter as in a previous claim Award 12959, which also involved the elimination of a clerical position and the distribution of activities thereof to two telegrapher positions.

In the instant matter, the position abolished was that of Chief Clerk at Bisbee, Arizona, and the retained employes, each of which assumed some part of the functions formerly performed by Chief Clerk, were Agent and Telegrapher.

The instant situation has one characteristic which distinguishes it from the facts in Award 12959. That is, that the Agent here is shown by the record to be required to devote the major portion of his day to Agent's duties taking him away from the station,—according to Carrier's unrebutted statement, from 6 to 7 hours per day, including 5 to 6 hours' work in one removed area on an average of three days per week.

Carrier also asserts that the Telegrapher at this location has telegraphic duties of about thirty minutes in each day, scattered throughout the day. (Petitioner asserts that such work does not exceed ten minutes in each day.)

Carrier argues from the foregoing that it would be inefficient to dispense with the Telegrapher and add his duties to the Agent, retaining Chief Clerk for the same duties as in the past.

It will be seen that this Board is being invited to make a judgment as to the validity of the management decisions here made by Carrier from the viewpoint of economy and efficiency. Yet, Carrier has here and in its previous case admonished us against intruding on its right to exercise its own managerial discretion in such matters.

We decline to re-evaluate management's business judgments *per se*. Our obligations are contained within the four walls of the Agreement, up to the point at which compliance with said Agreement terms are clearly shown to be impossible of fulfillment. There has not been such a showing here.

The standards we applied in Award 12959 are equally applicable to the claim now before us and we reach therefrom the same conclusions. By the criterion of history of usual and customary exclusivity of assignment, Carrier cannot be sustained in having abolished Position No. 3, Chief Clerk, and concurrently transferring the duties of said position to Agent and Telegrapher.

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;

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 9th day of October 1964.

DISSENT TO AWARD 12960, DOCKET CL-12250

Award 12960 is in error for the same reasons expressed in the Dissents to preceding Awards 12822 and 12959, which are here adopted by reference.

D. S. Dugan
R. E. Black
P. C. Carter
T. F. Strunck
G. C. White