

Award No. 13100
Docket No. CL-12560

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

**SPOKANE, PORTLAND AND SEATTLE
RAILROAD COMPANY
(System Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4952) that:

(1) Carrier violated the controlling Agreement between the parties at Salem, Oregon from February 1, 1960 to December 1, 1960 when it abolished the 2:30 P.M. Yard Clerk position and concurrently therewith established a Telegrapher position, assigning all of the clerical work of the Yard Clerk position to the telegrapher who is not covered by the Agreement.

(2) Yard Clerk E. J. Stainbrook shall be compensated for eight hours at the time and one-half rate for each day the telegrapher performed clerical work during the period extending from February 1, 1960 to December 1, 1960, inclusive.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains a freight station at Salem, Oregon and on the date prior to the improper abolishment of a clerical position the force consisted of the following:

Supervisory Agent

Chief Clerk	8:00 A. M. to 5:00 P. M.	Mon. thru Fri.
Yard Clerk	6:00 A. M. to 2:30 P. M.	Mon. thru Fri.
Yard Clerk	2:30 P. M. to 11:30 P. M.	Mon. thru Fri.
Warehouseman	7:00 A. M. to 4:00 P. M.	Mon. thru Fri.
Bill Clerk	8:00 A. M. to 5:00 P. M.	Mon. thru Fri.
Clerk	8:00 A. M. to 5:00 P. M.	Mon. thru Fri.
1st Trick Teleg.	8:00 A. M. to 4:00 P. M.	Tues. thru Sat.
2nd Trick Teleg.	12:01 A. M. to 8:00 A. M.	Tues. thru Sat.

claim even if Respondent's action on February 1, 1960 was a violation of the clerks' agreement, which it was not. In other words, even if there was a contract violation (and Respondent asserts there was none), there would be no basis for the claim as presented unless it could be shown that claimant suffered a monetary loss by reason of the alleged violation and this he cannot do as his assignment was not affected by the change in operation.

VIII. SUMMATION

Respondent, Petitioner and Order of Railroad Telegraphers were parties to the August 21, 1954 national non-operating agreement. Respondent has shown:

- (1) that under the "rules and practices" with respect to assigning clerical duties to telegraph service employees in effect on August 21, 1954, it was free to assign duties which are clerical in nature to telegraphers in the interest of efficiency and economy of operation;
- (2) that Article VIII of the August 21, 1954 agreement provides that "present rules and practices" are undisturbed;
- (3) that Petitioner made two **unsuccessful** attempts in 1956 and 1957 to have those "rules and practices" changed;
- (4) that such "rules and practices", therefore, remain undisturbed to this day;
- (5) that the assignment of duties which were clerical in nature to the re-established telegrapher position at Salem on February 1, 1960 was consonant with those "rules and practices";
- (6) that, in any event, claimant suffered no monetary loss by reason of the re-assignment of work in the Salem office;
- (7) wherefore, Respondent submits that this entire claim is without merit and must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant contends that prior to February 1, 1960, Carrier maintained a freight station at Salem, Oregon; that effective February 1, 1960, the station accounting was removed and assigned to clerical employees at Carrier's Centralized Station Accounting Headquarters at Portland; that a number of positions were abolished at Salem including the one designated as Clerk No. 4, hours 2:30 P.M. to 11:30 P.M. and all of the clerical duties of that position including yard checking, preparing switch lists, industry yard check reports were assigned to a position designated as Second Trick Telegrapher, hours 3:59 P.M. to 11:59 P.M. established on February 1, 1960, for the sole purpose of operating a teletype machine to transmit billing information to Portland; that the Second Trick Telegrapher was not assigned any train order work or other duties which a telegrapher has the exclusive right to perform as Salem was a non telegraphic station during the hours of his assignment; it is contended that the work of the Yard Clerk (Clerk No. 4) was covered by the Clerks' Agreement and that, when his position was abolished, the work was delegated to one outside of the agreement which was not bona fide.

In opposition to the contention of the Claimant, the Carrier maintains that over a period of years clerical work has been performed on this property by telegraphers, with a telegraphic duty to perform, in such amount as to fill out a telegrapher's assignment; that there is no provision of the Clerks' Agreement that contemplates the operation of teletype machines will be performed by employees under the Clerks' Agreement; that on this property operation of teletype machines has been performed by employees under the Telegraphers' Agreement; that the Claimant has failed to offer any proof that this work was ever performed by clerks on this property; Carrier also claims that the total time consumed in clerical work by Clerk No. 4 was three and one-half hours and that at no time did the Second Trick Telegrapher work overtime; that Salem was an open telegraph station 24 hours a day and that in addition to operating a teletype machine the Second Trick Telegrapher handled train orders, messages and other telegraphic work when it was necessary; that the "yard check" made at Salem consisted of a check of cars on the various industry tracks and that during the entire period of this claim Company records reveal that the Claimant, designated as Clerk No. 5, made the physical check and that at no time was the yard check made by the incumbent of the afternoon clerical position, Clerk No. 4, nor by the Second Trick Telegrapher.

We find as a landmark in the consideration of the relationship between Clerks and Telegraphers Award 615 — Swacker which has been quite universally followed:

"For obvious reasons in diminution of force, a clerk cannot undertake or be accorded telegrapher's duties but the converse is not true; on the contrary, where two positions are involved, one, that of a clerk, and the other, that of a telegrapher, and one is to be abolished, the telegrapher — if any telegraph duties remain — has the absolute right to the position including the assumption of the remaining clerical duties. As previously stated, this condition subsisted at the time, long before, and ever since clerks' agreements were executed and they were made in the light of these conditions which are a clear limitation or exception to the exclusive right of clerks to the performance of clerical duties."

We find a qualification of this award in Award 9440 — Bernstein which Claimant relies on and which contains the following statement:

"We hold that the transfer of yard check clerical work to the Telegrapher (Second Trick Operator) does not fall within the exception to the general jurisdiction of the Clerk's Scope Rule established by Award 615 because the Telegrapher was required to travel substantial distances (one-quarter mile and one-half mile plus the length of the trains checked) from his regular post."

Claimant, having presented this claim, has the burden of establishing his right to a sustaining award. Beyond the mere assertion that the Second Trick Telegrapher had to travel in making car checks from one quarter mile to one-half mile from his station in addition to the length of the train, we have no substantial proof that he was away from his station for any appreciable span of time during his assignment more especially in view of Carrier's denial that any yard check was made by the incumbent of the position between January 1, 1960, and December 1, 1960.

There is nothing in the record which would indicate that teletype machines were operated by any employees other than telegraphers on this property.

Carrier has offered positive evidence that clerical work has been performed in the past by employees under the Telegraphers' Agreement.

Other matters have been presented which, though incidental to the issues presented here, do not appear necessary to a determination of the issues involved. Under all the circumstances we feel that Claimant has failed to establish by the burden of proof required that the Agreement has been 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

The Agreement has not been 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 November 1964.