

Award No. 13197

Docket No. CL-13484

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5148) that:

(a) The Carrier violated the Clerks' Agreement when it failed to call George A. Pewtress on April 29, 1961 at Garfield, Utah and each succeeding Saturday, to perform the clerical work of his position and assigned the work to the Agent, an Employee not within the scope and seniority rules of the Clerks' Agreement.

(b) The Carrier shall now be required to allow George A. Pewtress a day's pay for Saturday, April 29, 1961, and each succeeding Saturday until the violation of the Agreement is corrected.

EMPLOYEES' STATEMENT OF FACTS: Effective April 29, 1961 the Agent at Garfield, Utah, an employee not within the scope of the Clerks' Agreement, was assigned a six day work week. Coincident therewith the Agent started taking over the following clerical work on Saturdays which is regularly assigned to and is being performed by the Cashier's position the other five days of the work week. Saturday and Sunday are the rest days of the Cashier's position. The clerical work involved consists of making out of yard check, preparing switch lists, signing bills of lading, making waybills, extending bills of lading and keeping demurrage records. Prior to assignment of this work to Cashier's position on or about March 31, 1961, the work was assigned to and handled by a General Clerk's position which was abolished at close of business on March 31, 1961.

In order to get a complete understanding of the handling of the work herein involved, it is necessary to go back to February 11, 1960 when the Assistant to Vice President of the Carrier wrote the General Chairman asking for the latter's concurrence in establishing a Tuesday through Saturday work week for the General Clerk's position, with Sunday and Monday as the rest days. (Employee Exhibit E).

In the handling on the property the Organization has relied upon Award No. 5623. The sustaining award in that case, however, was specifically predicated upon the finding that the duties therein involved had been "assigned exclusively to the clerical position during the week". That is not the case here.

As previously pointed out, the agent-telegrapher has at various times in the past regularly and normally performed virtually all of the station and clerical duties at this station. At the time the claim arose and at present his principal duties on Saturday consist of making up of switch lists and the billing of cars. He regularly and normally also performs or assists in performing these same duties, as well as other station and clerical work also performed by the cashier-clerk, during the week, Monday to Friday, as well as on Saturday. There is no work performed by the agent-telegrapher on Saturday which he has not always performed and which he does not normally perform or assist in performing during the week.

The work which is performed by the agent-telegrapher on Saturdays is merely work which the agent-telegrapher at this station has always performed as an integral part of his assignment. Sometimes he had been assisted in these duties by the assignment of additional telegrapher positions and sometimes by clerical positions. The duties, themselves, however, are not the exclusive property of any position or of any craft and have traditionally been performed by all. There is nothing in the Clerks' Agreement which exclusively reserves such station work to clerk positions or which precludes an agent-telegrapher from performing such duties which he has traditionally handled and which he still normally performs as a part of his regular assignment.

The claim is without merit and should be denied.

OPINION OF BOARD: The Garfield, Utah, station was manned solely by an agent-telegrapher when first opened in 1900. A telegrapher clerk was added in 1907 and a cashier-clerk in the 1920's. From that time until relatively recently there have been continual fluctuations in the size of station crew and its composition, depending upon the transportation demands of industry in the area. In 1961 the Carrier abolished a general clerks' position and assigned his work on Monday through Friday to the Cashier who had done the work previously.

The instant dispute arose in April 1961 when the Carrier changed the workweek of the cashier-clerk to Monday through Friday and of the agent-telegrapher from Monday through Saturday. Since then the agent has had a rest day on Sunday and the cashier-clerk rest days of Saturday and Sunday. On Saturday the agent performs certain clerical work which the Organization claims is assigned to and performed by Cashiers on Monday through Friday. Accordingly it seeks compensation for the regular Cashier thus denied Saturday work. The work in dispute includes making out yard check, preparing switch lists, signing bills of lading, making waybills, extending bills of lading, and keeping demurrage records.

The Organization contends that the tasks performed on Saturdays by the agent are normally performed by the cashier on the other five days of the work week and cannot be removed from the Organizations jurisdiction under the terms of the parties' Scope Rule. It points out that the Carrier recognized the cashiers exclusive right to this Saturday work in paying two claims arising from a similar fact situation in January 1960. It cites Rule 41 (i) as requiring the Carrier to call in the regular cashier on Saturdays to perform the duties of his position if no qualified extra or unassigned employe is available.

The Carrier contends that nothing in the Agreement prohibits the agent-telegrapher from performing the disputed clerical and station duties which are incidental to his assigned position, and which traditionally and customarily have been performed by him as a part of his assignment. It denies that these duties are exclusively reserved to either the Claimant cashier-clerk or to any other employees covered by the Clerks' Agreement.

There seems to be no question that functions performed by the cashier during his Monday to Friday work week were performed by the agent-telegrapher when the cashier was on his day off on Saturday. Whether this, per se, constitutes a violation of the parties' Agreement depends on the cashiers jurisdiction over such tasks as agreed upon by the parties in the Scope Rule. If the Scope Rule grants exclusive jurisdiction to the cashiers over the tasks, then their performance on Saturday by someone outside the Agreement must be construed as an Agreement violation. Obviously, if the Scope Rule does not specifically reserve these functions to the cashiers then they may also be performed by individuals outside the Clerks' Agreement without protest by the Organization regardless of the day on which they were performed.

The Scope Rule in the instant case is best described as a general Scope Rule, and does not in and of itself reserve jurisdiction to the cashiers of the tasks in dispute. In order to prevail, the Organization must show that the disputed tasks belong exclusively to Cashiers.

"* * * from a consideration of tradition, historical practice and custom, and on that issue the burden of proof rests upon the Claimant." (Referee Hall-11755).

In the instant case, we find that there has been insufficient evidence presented by the Organization to sustain its burden of proving that the disputed clerical tasks performed by agent-telegraphers on Saturday were in fact reserved to cashiers on other days of the week.

"It is not enough that the Organization show that employees covered by the Agreement have performed similar work. The Organization must show that such employees have exclusively performed such work." (Referee Dolnick--10515).

Indeed the weight of the evidence is to the contrary:

The Cashiers have not always been assigned to this station, and there have been times when only telegraphers manned it; during such times telegraphers performed clerical tasks such as those in dispute; at other times in the past, clerical work was done by individuals outside the Clerks' Organization. In view of these facts, and the prior awards of this Board under similar circumstances (12148, 11864, 10647) we are unable to find that the Organization exercised the exclusive jurisdiction over the disputed clerical work as required by the Scope Rule to sustain its claim.

Turning to the applicability of Rule 41 (i), it is clear that the right of Organization members to work on a day which is not a part of any regular assignment is conditioned upon a showing that the disputed work is within their exclusive jurisdiction.

As noted by Referee Rose in 9944:

"Under such circumstances the employees have failed to prove that Claimant was exclusively assigned to the claimed work during

his regular work week, which is necessary in proving a violation of Rule 32-8. Therefore, claim will be denied."

Again in 12047, Referee Engelstein held:

"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."

In view of the foregoing, we find that the Carrier did not violate the Scope Rule or Rule 41 (i) in the instant case.

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 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 13th day of January 1965.