

Award No. 13400
Docket No. CL-13699

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5238) that:

(a) The Carrier violated the clerical Agreement when on May 1, 1961 it abolished the position of Second Shift Ticket Clerk and changed the starting time of the First Shift Ticket Clerk from 7:30 A. M. to 12:00 noon, and then assigned the Depot Ticket Agent, an employe not covered by the clerical Agreement, to work as Ticket Clerk 7:30 A. M. to 12:00 noon, at Rock Island, Illinois.

(b) Mr. G. A. Carlson be additionally paid four and one-half (4½) hours per day, based on the rate of \$420.86 per month, plus any general increases, for seven days per week, effective May 1, 1961, and continuing until the violation is discontinued.

(c) Mrs. Jane Conrad be additionally paid eight (8) hours per day, based on the rate of \$420.86 per month, plus any general increases, for seven days per week, effective May 1, 1961, and continuing until the violation is discontinued.

(d) The Carrier shall return the selling of tickets, 7:30 A. M. to 12:00 noon, and related clerical work at Rock Island, Illinois, to employes covered by the clerical Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Scope Rule of the clerical Agreement lists "Ticket Clerks (Sellers)".

Mr. A. E. Cover, Depot Ticket Agent, Rock Island, Illinois, was advised jointly with others on February 24, 1961, as follows:

"Later, A. E. Cover will protect Ticket Agent position Rock Island through March 2, 1961, after which time position is abolished."

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to the time the subject dispute arose, sole authority is clearly bestowed by Section 2, First of the Railway Labor Act which prescribes unequivocally:

"It shall be the duty of all carriers * * * and employees * * * to make * * * agreements * * *"

The Carrier submits the foregoing is unchallengeable — for a penalty to be assessed or extracted it must be included in an agreement, to be included in an Agreement is must be put there by the parties. The parties have been awarded this sole authority by law.

In conclusion the Carrier has shown the claims are entirely without basis under the Clerks' Agreement. Further, even under the Clerks' position there could be no violation with regard to Mrs. Conrad because none of Mrs. Conrad's work went to anyone outside the Clerks' Agreement, but instead went to the Day Ticket Clerk. Also, the Carrier has shown the claimants were in no way damaged, Mrs. Conrad was not even on the job for months and has since retired. The amounts claimed are simply penalties unilaterally created by the Organization having no basis under any agreement provision and none has been cited.

We have shown the Organization cannot unilaterally create a penalty, if a penalty is to exist it must be created and included in agreement solely through joint action of the parties through the procedures of Section 6 of the Railway Labor Act.

This claim fails any way it is viewed.

the Carrier's depot ticket force at Rock Island, Illinois consisted of the following:

Position	Incumbent	Days	Hours
Depot Ticket Agent	A. E. Cover	7	7:00 A.M. to 12 N & 1:00 P.M. to 5:00 P.M.
1st Ticket Clerk	G. A. Carlson	6	7:30 A.M. — 3:30 P.M.
2nd Ticket Clerk	Jane Conrad	7	3:30 P.M. — 11:30 P.M.
3rd Ticket Clerk	D. P. Clark	7	11:30 P.M. — 7:30 A.M.

The Depot Ticket Agent position was covered by the Telegraphers' contract, and the three Ticket Clerk positions were covered by the Carrier's Agreement with the Clerks. Rule 1, Section 1 (Scope) of the Clerks' Agreement lists "Ticket Clerks (Sellers)" among the Group 1 employees. A Relief Clerk position filled the second trick Ticket Clerk's position on Sunday and Monday, the third trick Ticket Clerk's position on Tuesday and Wednesday, and the first trick Ticket Clerk's position on Saturday. On Sunday, the Depot Ticket Agent assumed the duties of the first trick Ticket Clerk, along with his duties as Agent. The Agent's position was covered by relief on Friday.

Carrier states it became apparent that there was insufficient work to justify retaining these four positions, with result that decision was made to abolish the 2nd Trick Clerk position. Carrier states a check of this position disclosed an average of 3 hours 45 minutes of work daily, 35 minutes of which

would no longer be required and would be abolished. It also was decided that those duties of the position specifically required between 9:00 P. M. and 11:30 P. M. would be eliminated because the office would not be open between 9:00 P. M. and Midnight. It is established that for the six month period through March 1961, ticket sales at this office were \$20,055.19 less than for the six months ending March 31, 1960 — or an average monthly decrease of \$3,342.53.

Accordingly, in April 1961 — after notice was given to the Clerks — the Carrier abolished the 2nd trick Ticket Clerk position, changed the hours of the first trick Ticket Clerk to a schedule of 12:00 Noon to 9:00 P. M. (with meal period of 6:00 P. M. to 7:00 P. M.) and changed the hours of the 3rd trick Ticket Clerk to a schedule of 12:00 Midnight to 8:00 A. M. The Depot Ticket Agent's position was continued with hours of 7:00 A. M. to 5:00 P. M. (with one hour lunch period). The ticket office was thereafter closed from 9:00 P. M. to 12:00 Midnight; and from 8:00 A. M. to 12:00 Noon daily all ticket selling was handled by the Depot Ticket Agent or the Relief Agent. The Organization protested the above changes on the ground that the Carrier had violated the Clerks' Agreement by transferring Ticket Clerk work to the Depot Ticket Agent, who is covered by the Telegraphers' contract. Hence the present dispute.

The Scope Rule if the subject Agreement lists job titles but does not define the work which is covered by these titles. This Scope Rule is therefore general in nature, which makes it necessary to give consideration to custom and practice in the assignment of the disputed work.

The Depot Ticket Agent was the original position in the Carrier's ticket office at the subject location and a clerical force was subsequently added to take care of the increase in business. Thus it is apparent that the Ticket Agent sold tickets, made reservations, etc. in this office before there were any Ticket Clerk positions in existence here. Moreover, even after Ticket Clerk coverage was provided on three tricks the Agent continued to be the only employe on duty in the ticket office during the Sunday first trick and during these hours he handled all ticket sales that arose. This Sunday work was performed by the Ticket Agent without complaint from the Clerks' Organization, so far as the record discloses, until the present dispute arose. It is difficult to believe the Organization was unaware of this practice. But in any event, the Organization is chargeable with such knowledge. We find it unnecessary to resolve the conflict between the parties as to whether the Agent handled some ticket selling on days other than Sunday when there was 24 hour Ticket Clerk coverage at this location. It is manifest from the undisputed facts that employes covered by the Clerks' Agreement have never performed all the ticket selling and related work at this location.

Under this set of facts, we are unable to find any violation of the Scope Rule of the confronting Agreement. We find nothing in said Agreement which bars the Carrier from continuing to utilize the Depot Ticket Agent for ticket sales, nor do we find any contract language which indicates that — once a Ticket Clerk position was established at the involved location — the position could not thereafter be abolished when a decrease in business made it possible for the ticket selling work to be handled by the remaining Ticket Clerk positions plus the Depot Ticket Agent.

The Organization notes that the Carrier initially intended abolishing the Depot Ticket Agent position instead of the 2nd trick Ticket Clerk position. We do not regard this fact as in any way modifying the foregoing analysis

as to whether the changes actually effectuated by the Carrier were violative of the Agreement. The Organization also contends that such supervision of the Ticket Clerks as was needed could have been handled by the Freight Agent assigned to the freight office in a nearby building. Thus it is the Organization view that the excess force which developed at Rock Island was in the supervisory force, rather than in the clerical force. It is not the proper function of this Board, however, to determine the amount of supervision the Carrier should utilize.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.