

**Award No. 13610**

**Docket No. CL-13466**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Don Hamilton, Referee**

**PARTIES TO DISPUTE:**

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

**UNION PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5149) that:

(a) The Carrier violated the Clerks' Agreement when it abolished position of Relief Clerk at Salt Lake City, Utah and assigned work of that position to Operators and Chief Operator, employees not within the scope and seniority rules of the Clerks' Agreement.

(b) The Carrier shall now be required to reimburse Virginia B. Nash for eight hours' pay at the Message Checkers' rate of pay for each Saturday and Sunday beginning February 11, 1961 and continuing for each Saturday and Sunday subsequent to that date until such time as the work of the abolished position is restored to the clerical employees from whom the work was taken.

**EMPLOYEES' STATEMENT OF FACTS:** On February 4, 1961 position of Message Checker in "SA" Telegraph Office at Salt Lake City, Utah with assigned hours 3:00 P.M. to 11:30 P.M. with Saturday and Sunday as the rest days, was reduced from a seven day position to a five day position and coincident with that position of Relief Clerk was abolished, and work of that position given to the Operators and Chief Operator and which are positions not coming under the scope rule of our agreement.

Salt Lake City, Utah is a major terminal on the Union Pacific Railroad as well as the location of the General Office headquarters for the Southwestern District of that railroad. By reason of that there is a large volume of messages to be transmitted and handled through the "SA" Telegraph office where the Message Checker position is located. Prior to February 4, 1961, the position of Message Checker was relieved on the rest days of the position, Saturday and Sunday, by a regular assigned relief clerk and when the relief clerk position was abolished on February 4, 1961 the work of that position was assigned to and is being performed by employees who do not come under the scope of our Agreement and who hold no seniority rights to the work.

The Claimant, Virginia B. Nash, was a furloughed Message Checker and had made application at the time of furlough as desiring to return to

The Board rejected the argument of the Employees in the Baker claim and denied the claim in its Award No. 18.

The Board will note the parallel in the Baker claim covered by this Award No. 18 and the dispute herein.<sup>5</sup> In both cases, seven-day positions with mid-week rest days were reduced to five-day assignments with Saturday and Sunday rest days because of a diminution of work. In both cases the small amount of work necessary on the rest days of the reduced assignment was performed by other employees not restricted in its performance because of craft or class, and who were on duty because of staggered work weeks.

The rejection by Special Board of Adjustment No. 173 of the Janitor-Trucker claim at Baker, Oregon is in line with the principle enunciated by this Board in the handling of like issues and the precedent of that award should be followed here.

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.

The particular duties involved here have not been assigned exclusively to the Claimant's clerical position or to any other clerk position during the week. On the contrary, as previously pointed out, Chief Operator-Printer Mechanics on duty during the same assigned hours during the week customarily also perform and have performed message checking work as a part of their regular assignments. The Claimant's clerical position was established not to supplant the performance of such duties by the Chief Operator-Printer Mechanics but merely to relieve them of the volume which may exceed the latter's capacity or interfere with the performance of telegraphic and communication duties. On the other hand, the volume of telegraphic work and message checking between 3:00 P. M. and 11:30 P. M. on Saturdays and Sundays is not such as to require that the regularly assigned Chief Operator-Printer Mechanician on duty on those days have the additional assistance for message checking duties, and, accordingly there is no such surplus work to require the presence or assignment of a message checker. Since message checking duties have not been assigned exclusively to Claimant's position during the week, there is clearly no basis for the contention that such duties are exclusively reserved to Claimant on Saturdays and Sundays.

The claim is without merit and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** In this claim the Carrier reduced a seven-day Message Checker position to a five-day position. The rest days of the seven-day position, Tuesday and Wednesday, had been covered as part of a regular relief position. On February 4, 1961, when the seven-day position was reduced,

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<sup>5</sup>While Special Board of Adjustment No. 173 did not treat the matter as significant, the two cases differ factually in the respect that in the Baker claim the Baggage-men-Clerks who took over the janitor work on the rest days of the Janitor-Trucker assignment did no janitor work during the balance of their regular work week, whereas in this case message checking, the work absorbed by Chief Operator-Printer Mechanics on the rest day of the regular Message Checker, is also part of the Chief Operator-Printer Mechanics' regular week day assignment.

the position of Relief Message Checker was abolished. Claimant became the senior unassigned clerical employee in the "SA" office and was used for three days of rest day relief work on positions of Message Checker and Messenger in the "SA" office. Alleging that message checking work remained to be performed Saturdays and Sundays on the 3:00 P.M. to 11:30 P.M. shift, Claimant filed this claim. She charges that the performance of this work by employees not covered by the Clerks' Agreement is a violation of the Scope Rule (Rule 1) and further, that she is entitled to perform the work under the Work On Unassigned Days Rule (Rule 41 (1)).

In order to substantiate a violation of the rules mentioned, the Organization would have to show that this work belonged to them under the Agreement. We are inclined to believe that the record indicates that the theory of ebb and flow is properly applicable in this case.

The record shows:

"Telegraphers handled the work in the beginning, then as the volume of telegraphing and message handling work increased, message checker positions filled by employees under the Clerks' Agreement were put on to do some of the checking work. However, at no time have telegraphers given up all message checking work. Even during times when Message Checkers have been assigned in the Salt Lake City "SA" Office, Chief Operator-Printer Mechanics and other Telegraphers in that office have continued to devote a portion of their assigned hours to message checking work. For instance, during lunch reliefs and rest periods when the Message Checkers are not available, the Chief Operator, as well as other telegraphers, regularly handle all of the duties performed by such positions and, in addition, during periods of congestion, often assist in performing these duties."

The record also indicates that the work involved had decreased to between two and three hours on Saturday and Sunday, by February 4, 1961. We are of the opinion that the Carrier properly acted within its managerial prerogatives in handling the situation as it did in this case. Therefore, the claim will be denied.

**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

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 21st day of May 1965.