

Award No. 13680

Docket No. CL-12282

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4887) that:

(1) Carrier violated the Schedule for Clerks' Agreement, when on December 14, 1959, it abolished Position No. 10, Ticket Clerk, at Wabash, Indiana, and assigned the entire clerical work, heretofore handled exclusively by clerical employes, to the position of Telegrapher-Clerk, a position not within the Scope Rules of the Clerical Agreement.

(2) The clerical work be returned to clerical employes.

(3) Mr. H. R. Miller the regularly assigned employe on Position No. 10, Ticket Clerk, at the effective date of the abolishment be compensated for all wage loss sustained by him retroactive to December 14, 1959.

(4) Mr. L. W. Newport, relief clerk, Huntington, Indiana, relief position No. 13, who was displaced in the exercise of seniority rights by Mr. H. R. Miller, also be compensated for all wage loss sustained by him retroactive to January 28, 1960.

NOTE: The monetary wage loss of Miller and Newport to be determined by joint check of payroll and other necessary records.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 14, 1959, there was in effect a Ticket Clerk, Position No. 10, in the Agent's office at Wabash, Indiana, a five (5) day assignment, Monday through Friday, rest days Saturday and Sunday, hours of assignment 8:00 P. M. to 5:00 A. M., basic rate of pay \$17.69 per day. This position was a straight daily rated position fully covered by all of the rules of the Clerical Agreement effective May 1, 1953. This position was established under the Clerical Agreement on or about July 25, 1942, with agreed on title, duties and rate of pay, by the Carrier and Brotherhood.

On December 9, 1959, regular form 1714 was issued by Mr. F. C. Flynn, Superintendent, Montpelier Division, with instructions that at the close of work on December 14, 1959, Position No. 10, Ticket Clerk, Wabash, Indiana,

The Railway Labor Act provides definite procedures for the handling of requests for changes in existing Agreements relating to rates of pay and working conditions, see Section 6, Section 5(a), Section 7 and Section 10 of that Act.

The Adjustment Board with its various Divisions provided for in Section 3 of that Act is established for the limited and specified purposes provided in Section 3, i.e., to consider and render decisions in disputes "between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *." This Board was granted no authority to add to, change or eliminate any rules of existing agreements or to place the Carrier in any position other than that in which it has placed itself by reason of a collective bargaining agreement.

The Carrier has not by agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes granted clerks the right to the performance of ticket and clerical work to the exclusion of telegraphers.

In order to sustain this claim, this Board must ignore the limitations upon its authority and the processes provided by law for changing agreements relating to rates of pay and working conditions for railroad employes and thus deprive the persons who own this company of property without due process of law.

The Board has no jurisdiction to supply that which the Schedule for Clerks does not contain.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is predicated upon the theory that the Carrier violated the Scope Rule of the Clerks' Agreement when on December 14, 1959, it abolished the clerical position of Ticket Clerk at Wabash, Indiana, and established a position of Telegrapher-Clerk at that place.

Notice of the pendency of this dispute was timely served by the Division on the Order of Railroad Telegraphers in accordance with the provisions of Section 3, First (j) of the Railway Labor Act. That organization declined to participate herein.

In the handling of the dispute on the property and in its submission to this Board the Carrier took the position that the claim had not been handled in accordance with the requirements of Article V of the Agreement of August 21, 1954. That issue was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretation or application of certain stated provisions of specified National Nonoperating Employe Agreements. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 13):

"FINDINGS: The carrier has taken the position that (ART. V) the claim as presented, and as handled on the property, does not meet the requirements of Article V of the August 21, 1954 Agreement in that it does not set forth any specific dates for which wage loss is claimed.

"The National Disputes Committee rules that the claim in Docket CL-12282 complies with the requirements of Article V of the August 21, 1954 Agreement.

"DECISION: The claim in the instant dispute complies with the requirement of Article V of the August 21, 1954 Agreement.

"This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division N.R.A.B., for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

The foregoing procedural matters having been disposed of, the Board will now consider the case on the merits.

The facts are controlling and dispositive of the issue. It is not disputed that prior to July 25, 1942, the Wabash office was operated by three telegraphers who, in addition to their telegraph duties, handled ticket sales and other work. Due to increased traffic during World War II a new office was opened in nearby Hartman, Indiana, and the telegraphers at Wabash were transferred there. As a result of this transfer, the position of Ticket Clerk involved in this dispute was established at Wabash.

In 1959 when traffic had substantially decreased the Hartman operation was no longer considered necessary and was discontinued. Telegraphers there employed were transferred back to Wabash, their original place of employment, with the result that the clerical position of Ticket Seller was abolished as unnecessary. The duties thereof then were assigned to the Telegrapher-Clerk.

Under this set of facts, the Board finds no violation of the Agreement by the Carrier. That ticket selling and clerical work incident thereto may properly be performed by telegraphers in this industry and on this property is not open to question. Here it is also clear that substantially the same work involved in the dispute had originally been performed by telegraphers at Wabash prior to 1942. Their reassignment to such work cannot, therefore, be held to violate the Clerks' Agreement.

Accordingly, the claim will be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 25th day of June 1965.