

Award No. 13964

Docket No. CL-14210

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5395) that:

1. Carrier violated Rules 1, 2, 3, 58 and 76 (among others) of the July 1, 1962 Agreement when on September 16, 1962 Position No. 15, Clerk-Stenographer, in the Chief Train Dispatcher's Office at New Smyrna Beach, was nominally abolished and the duties of that position transferred to newly created position of Clerk-Operator, and that

2. The Carrier shall be required to restore the work in question to employees covered by the Clerks' Agreement, and that

3. The Carrier shall be required to compensate former incumbent of Clerk-Stenographer Position No. 15, Almeda Kimball, for a day's pay Tuesday through Saturday of each week beginning September 18, 1962, and the former incumbent of Relief Assignment No. 10, Emily C. Anglin, be compensated for a day's pay each Sunday and Monday of each week beginning September 16, 1962, and the senior furloughed clerk be compensated for a day's pay each Sunday on Ticket Clerk Position No. 111 and each Monday on Baggage Clerk Position No. 6, both at Daytona Beach beginning September 16, 1962, and each day thereafter until the violations of the Clerks' Agreement are corrected and the work restored to clerical employees entitled to perform same.

EMPLOYEES' STATEMENT OF FACTS: On August 1, 1962, telegraphers and instruments were moved from the Chief Train Dispatcher's Office, upstairs in the Division Office Building, to the ticket office at New Smyrna Beach, at unrelated locations. When the telegraphic assignments were moved to the Ticket Office they were filled out with clerical work necessary

included in the discontinued Yard Clerk position, such fill-in work being done either in the freight house or in the Yard office, which is an adjunct of the freight house. It appears that the Clerk-Operator performs his communication functions in both locations.

"We do not find that a contract violation has occurred in this instance. The Board has frequently held that a Telegrapher may perform clerical duties to fill in his time. The disputed position was discontinued because there was a decline in the volume of clerical work to be performed. The diminished duties of the position were distributed among other positions which could properly do such work under the circumstances here present." (Emphasis supplied.)

These findings are equally pertinent to the instant dispute and demand denial of the claims of the Employees.

For the reasons stated the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective September 16, 1962, Carrier abolished Clerk-Stenographer Position No. 15 in the Chief Train Dispatcher's office at New Smyrna Beach, Florida. At the same time Carrier established Position No. 15, Clerk-Operator in the Chief Train Dispatcher's Office and abolished Position No. 18, Operator, at the New Smyrna Beach Ticket Office. The newly established Position No. 15 Clerk-Operator was required to fill out his tour of duty by the performance of clerical work, including stenographic work, which had theretofore been performed by the Clerk-Stenographer Position No. 15 which had been abolished. The Employees object to the removal of this clerical work and its assignment to the Clerk Operator as a violation of the Scope Rule and the seniority and promotion rights of the Clerks.

The Scope Rule is general in nature, listing the classifications of employees covered but not the duties thereof. This Board has frequently stated that where such a Scope Rule is present, it is incumbent upon the Employees to prove that the work belongs to them by long custom and practice. See Awards 13048 and 13580. The Employees have not sustained that burden of proof. On the property and in its ex parte submission to this Board, the Organization made no attempt to prove that clerical work belonged exclusively to its members by reason of custom and practice. It relied on the argument that such work was granted to them by the language of the Scope Rule.

In its rebuttal brief and in argument before this Board, it raised for the first time the argument that stenographic work has always been performed exclusively by clerks. Aside from the impropriety of raising this argument for the first time so late in its submission, the Organization dismisses what has happened in "small so-called 'one-man' agencies" as irrelevant. Exclusivity is not proved by ignoring those instances which disprove it.

The thrust of the Organization's complaint on the property and in its ex parte submission was that Carrier abolished Clerk-Stenographers Position No. 15 "nominally" and assigned its work to a Telegrapher who was detached from his post and sent to an entirely unrelated location to take over those clerical duties, a practice which this Board condemned in Award 636.

The Organization's claim is based upon the fact that the Clerk-Operator also performs Telegraphic work at the New Smyrna Beach Ticket Office which is located about a mile away, to which the Clerk-Operator makes several visits daily. It is that post which the Organization states he is required to desert to perform clerical work at the Chief Dispatcher's Office.

The facts do not support the allegation that the telegrapher is detached from his post to take over clerical work. The clerical work was located at the Chief Dispatcher's Office which the Carrier established as the location of the newly created Clerk-Operator position. It was so announced in the bulletin advertising the position. This was not a "nominal" location of the job but the place where telegraphic duties were assigned to be done. We have frequently held that Carrier may assign clerical duties to a telegrapher to fill out his day. The assignment of clerical duties at the Chief Dispatcher's Office was in accord with the long established practice of filling out the telegrapher's day.

It is obvious that if the Clerk-Operator is assigned to the Chief Dispatcher's Office, his post is there and not at the ticket office. The validity of the Organization's argument depends on establishing that his post was at the ticket office. There is no evidence that the location of the post at the Train Dispatcher's Office was "nominal" or merely for the purpose of evading the rules. On the contrary, on October 17, 1962, M. M. Parker, Superintendent, wrote to S. L. DeLoach, Jr. District Chairman that "... the incumbent . . . is assigned to perform his telegraphic duties in the Chief-Train Dispatcher's Office not the ticket office . . ."

On November 1, 1962, the General Chairman wrote that the incumbent "performs clerical and telegraphic duties both at the ticket office and in the office of the Chief Train Dispatcher".

Thus the record sustains the fact that the Clerk-Operator was not only located at the Chief Train Dispatcher's Office but did telegraphic work there. Such clerical work as he did there apparently did not fill out his day sufficiently because he also had to do telegraphic work, not clerical work, at the ticket office.

The fact that he did telegraphic work in more than one location is not a concern of the clerks. Moreover, we have held that there is no violation of the Telegraphers' Agreement when a telegrapher performs telegraphic work at more than one location. Awards 13201, 13525.

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 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 19th day of November 1965.