

Award No. 14604
Docket No. CL-14176

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5355) that:

(1) Carrier violated the Rules of the current Clerks' Agreement when on July 7, 8 and 14, 1962 it permitted or required the Ticket Agent, an employee not covered by the Scope of such Agreement, to perform ticket selling work in lieu of using employees subject to Agreement terms, and

(2) That Ticket Clerk Harold Schmidt now be allowed eight hours pay at the overtime rate each date for Saturday and Sunday, July 7 and 8, 1962, and

(3) That Ticket Clerk John Bierman now be allowed eight hours pay at the overtime rate for Saturday, July 14, 1962.

EMPLOYEES' STATEMENT OF FACTS: There exists at the Cincinnati Union Terminal Company a Ticket Office set up for the purpose of selling tickets and performing the necessary accounting work in connection therewith. Such office comes under the direct supervision of Mr. L. O. Brown, Ticket Agent, a position not coming within the Scope of any Agreement. Such position is supervisory in nature and the duties thereof consist solely of supervision.

There also exists in this Ticket Office positions of Ticket Clerks the primary duties of which are to sell tickets to the traveling public. Such Ticket Clerk positions come under all provisions of the Clerks' Agreement.

As of dates of this claim Claimant Harold Schmidt held a regular assignment as Ticket Clerk working from Monday through Friday, rest days Saturday and Sunday. Claimant John Bierman likewise held a regular assignment as Ticket Clerk with Saturday as one of his assigned rest days.

On July 7, 8 and 14, 1962, the Ticket Agent, instead of calling employees to whom the ticket selling work was regularly assigned, elected or was instructed to perform the work of selling tickets when it became apparent the force on duty could not service the public in an expeditious manner.

Claimants Schmidt and Bierman were available for duty on their assigned rest days; however, no effort was made to notify them to report for duty.

CARRIER'S STATEMENT OF FACTS: There is an Agreement in effect between the Cincinnati Union Terminal Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees with effective date of July 1, 1946, amended September 1, 1949, amended February 1, 1956, with amendments up to date, which is controlling in the present dispute and which is hereby made a part of this dispute.

The Cincinnati Union Terminal is a union station facility which was placed in operation about April 1, 1933, and which is utilized as a unified passenger terminal in Cincinnati, Ohio by the Baltimore & Ohio Railroad, Chesapeake & Ohio Railway, Southern Railway System, New York Central System, Louisville & Nashville Railroad, Norfolk & Western Railway and Pennsylvania Railroad. The Cincinnati Union Terminal Company Ticket Office has been in charge of a Ticket Agent ever since the Terminal was placed in operation in 1933. The Ticket Agent has always been responsible for all sales of tickets, the accounting work in connection therewith, reservations and information, all reports of the Ticket Office, and the instruction and supervision of all employees in the Ticket Office. In connection with his duties and incident thereto, the Ticket Agent performs every operation in the office including making up, figuring rates and routes, selling tickets, answering phones, giving reservation and information data, ticket accounting and reports, and all related work.

Under date of July 20, 1962 (Carrier's Exhibit No. 1), Division Chairman Manning instituted a claim for violation of the Agreement.

The claim was denied by Ticket Agent Brown in letter dated July 24, 1962 (Carrier's Exhibit No. 2), the claim was appealed to the highest officer of appeals, Manager G. S. Gray, conferences were held, and the claim was denied (Carrier's Exhibit Nos. 3 through No. 8 inclusive). The claim was then progressed to the Third Division, N.R.A.B. in letter dated April 25, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: On the dates mentioned in the claims, the Ticket Agent assisted the ticket clerks when an unexpected emergency arose. A conference on the claims was held on March 8, 1963. On March 22, 1963 Carrier's Manager wrote to the General Chairman, in part, as follows:

"You stated that you had no objection to Ticket Agent Brown instructing an employee in the ticket selling, assisting an employee by selling out of the employee's cash box during an unexpected rush period . . ."

But Petitioner argues that the present situation is different because the Ticket Agent used a separate cash box. Till 23, which the Ticket Agent used on the three dates, was not in use. The fact that the Ticket Agent used a separate Till does not alter the fact that he assisted the ticket clerks because of an unexpected rush in ticket sales. He spent only a little time on each of the days selling tickets.

Rule 1 — Scope lists only the job classifications for the covered employees. It neither defines nor describes the work of such employees. The numerous

Awards of this Division have held that in this type of Scope Rule, the Petitioner must show that the disputed work has been historically, traditionally and customarily performed by the affected employees. There is no showing in the record that only clerks sell tickets. On the contrary, Carrier alleges that a Ticket Agent always has the right to sell tickets and do whatever other work required in the office. He ordinarily does not sell tickets. He does so only when "he is instructing a new employee, assisting a Ticket Seller, or as in the present claim, helping out for a short period due to an unexpected emergency." This is nowhere categorically denied by the Petitioner.

The allegation by the Petitioner "that the facts involved in this case clearly sustain Employees' position that the ticket selling work here involved is exclusively assigned to employees covered by the Clerks' Agreement" is a mere assertion. The probative evidence in the record does not bear this out. The work has not been done exclusively by clerks.

Petitioner also argues that Note No. 1 of Rule 1 is particularly applicable. Carrier did not remove the position or work from the ticket clerks. It did no more than what had been the historical, traditional and customary practice. There is no convincing evidence that the Ticket Agent may perform no work other than supervision.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1966.