

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5138) that:

(1) The Carrier violated the Clerks' current Agreement at Mount Pleasant, Texas, on May 20, 1960, when it abolished the positions of Cashier and Assistant Cashier, and required the Agent and Telegraphers to perform the work of the abolished positions.

(2) Messrs. H. C. Keathley, M. W. Smith, D. F. Presley and E. E. Boyer, Mount Pleasant, Texas, and Messrs. R. L. Duffell, Jr., W. F. Henderson and S. L. Grimes, Tyler, Texas, and Mr. B. B. Woolery, Hodge, Texas, and all other employes, including those furloughed, regardless of location, who were adversely affected by Carrier's action, be compensated for all monetary loss suffered, beginning with May 20, 1960, and for each subsequent date thereafter that a like violation occurs.

(3) The Carrier be required to check its records to determine all employes who were adversely affected and reparation due each employe.

EMPLOYEES' STATEMENT OF FACTS: On May 16, 1960, Mr. J. R. Holden, General Superintendent, Pine Bluff, Arkansas, advised Cashier H. C. Keathley that his position would be abolished with close of business Friday, May 20, 1960, and in the same notice advised Assistant Cashier M. W. Smith that his position would be abolished with close of business Saturday, May 21, 1960. (Employees' Exhibit A)

Mr. Keathley displaced Mr. R. L. Duffell, Jr., Tyler, who displaced Mr. W. F. Henderson, who displaced Mr. S. L. Grimes. Our records do not indicate who was displaced by Mr. Grimes. Mr. M. W. Smith displaced Mr. D. F. Presley, Mount Pleasant, who displaced Mr. E. E. Boyer, who displaced Mr. B. B. Woolery, Hodge, Texas. Our records do not indicate who was displaced by Mr. Woolery.

On May 10, 1960, General Superintendent J. R. Holden issued his Advertisement S-9 at Pine Bluff, to all Agents and Telegraphers, notifying them that applications would be received for ten days until 5:00 P. M., May 20,

2. The assignment of telegraphing to the agent had the effect of confining him to the office to the extent that the Carrier was being deprived of the benefits of an agent who could act as representative outside the office and perform other outside work. The telegraphing was not of great volume but it was scattered throughout the shift.

In order to release the agent for such work it was necessary to reassign the first trick telegrapher. Since the telegraphing was not nearly sufficient to occupy his time it was necessary to assign him other station work. Assigning him certain clerical work in order to fill out his time left insufficient work for the six clerical positions.

Accordingly, effective May 20, 1960 the clerical positions of Cashier and Assistant Cashier were abolished. The first trick clerk-telegrapher position was re-established as Cashier-Telegrapher, and the Agent-Telegrapher position reclassified to former position as Agent. The two general clerk positions were reclassified as Chief Yard Clerk positions, and the work distributed among the positions.

Thereafter, the force at Mt. Pleasant consisted of the following:

Agent
Chief Clerk
3 Chief Yard Clerks
Cashier-Telegrapher
2 Clerk-Telegraphers

On July 15, 1960, the Employees filed claim that the Carrier violated the Clerks' current Agreement at Mt. Pleasant, Texas, on May 20, 1960, when it abolished the positions of Cashier and Assistant Cashier and required the Agent, Clerk-Telegraphers, and the Cashier-Telegraphers to perform the work of the abolished positions and that all employees, including those furloughed, who were adversely affected by Carrier's action, be compensated for all monetary loss suffered, beginning with May 20, 1960 and for each subsequent date thereafter that a violation occurs and, further, the Carrier be required to check its records to determine employees affected and reparation due.

The claim was denied, was appealed and the denial affirmed.

Exhibits 1 and 2 are attached hereto and made a part hereof.

The applicable schedule Agreement is that with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees effective April 1, 1946, as modified by Supplemental Agreement dated July 22, 1949, and Memorandum of Agreement dated August 5, 1950, relating to the 40-hour week, copies of which are on file with the board.

(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 May 20, 1960 it abolished the positions of Cashier and Assistant Cashier at Mt. Pleasant,

Texas and distributed the work of the abolished positions to the Agent, Cashier-Telegrapher and the Clerk-Telegraphers.

Notice of the pending 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 first instance, Petitioner contends that the claim should be allowed because Carrier failed to issue its denial at one level of the appeal within the sixty-day time limit established by Section 1(a) of Article V of the 1954 National Agreement. The record discloses that the letter of appeal addressed to the former First Assistant Manager Personnel of Carrier was dated December 15, 1960 and was received by the Carrier on December 16, 1960. Said officer of Carrier issued a denial notice dated Friday, February 10, 1961, postmarked February 13, 1961 and ultimately received on February 14, 1961. Petitioner avers that the denial was not actually received until more than sixty days had lapsed since the appeal was mailed to Carrier and therefore, failed to meet the time limit requirements.

The National Disputes Committee Decision No. 16, dated March 17, 1965, incorporated into Award 13780, held that the claim should be considered "filed" on the date received by the Carrier. Consequently, the date of receipt determines the 60 day time limit, which commences to run from that date. Subsequent Awards have held that the Carrier must stop the running of the time limit by mailing or posting the notice required within the 60 days of the date that the claim was received. (Award 11575 and Second Division Award 3656). Here, the Carrier responded to the appeal within the sixty day period and the dispute is properly before us on its merits.

The record discloses that there was no "Cashier-Telegrapher" position at Mt. Pleasant prior to May 20, 1960 and that clerks had occupied the Cashier position since 1917. However, Petitioner does not deny Carrier's contention that "Cashier-Telegraphers" were employed at other stations for many years.

Both duties normally classed as cashier work and telegraph work required at Mt. Pleasant had substantially declined at the time Carrier abolished the Cashier and Assistant Cashier positions. Carrier's undisputed assertion is that cashier work required only 4 to 5 hours on weekdays and that only 2 to 3 hours of telegraph work remained on each shift. As Carrier was compelled to employ Clerk-Telegraphers at Mt. Pleasant on a continuous basis, it assigned additional clerical work to such employees to fill out their assignments. Duties normally classed as Cashier work were assigned to the newly established position of Cashier-Telegrapher during the first shift. The Agent-Telegrapher was restored to his former position as Agent and as such performed some of the clerical duties previously performed by the Cashier and Assistant Cashier positions.

Petitioner's position is that the work of the Cashier and Assistant Cashier at Mt. Pleasant, Texas had been performed traditionally and exclusively by clerks from 1917 to May 1960 and that Carrier violated the controlling Agreement between the parties when such work was removed from the scope of the Clerks' Agreement.

Carrier's defense is that the Scope Rule of the Clerks' Agreement is general in nature and that Petitioner cannot prove that the work in issue has been traditionally and customarily performed by employees covered by said Agreement on a system-wide basis to the exclusion of all others.

We find the position of Carrier persuasive because the Agreement covers an entire system in scope and application. (Awards 11239 and 13579). Since Clerk-Telegraphers and Cashier-Telegraphers are employed in freight offices at other stations throughout Carrier's system, we cannot find a violation of the controlling Agreement. Therefore, we must deny the claim.

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 29th day of July 1966.

LABOR MEMBER'S DISSENT TO AWARD 14695
(Docket CL-13226)

In the Opinion of Board, the Referee held:

"We find the position of Carrier persuasive because the Agreement covers an entire system in scope and application. (Awards 11239 and 13579). Since Clerk-Telegraphers and Cashier-Telegraphers are employed in freight offices at other stations throughout Carrier's system, we cannot find a violation of the controlling Agreement. Therefore, we must deny the claim."

Thus, the Referee went far out in denying the claim based on two Awards cited by Carrier; and completely ignored the Awards cited by the Employees, i.e.: 10736, 10743, 12422, 12822, 14302 and 14304; and Award No. 145 of Special Board of Adjustment 192 (BRC vs. B&O). He not even attempted to distinguish between such Awards and the claim before him. It would appear he was unable to do so.

For the above reasons, I dissent to this erroneous Award.

C. E. Kief
Labor Member
8-8-66

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