

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5415) that:

1. Carrier violated and continues to violate the Clerks' Rules Agreement when it abolished Clerk Position No. 6535 at Port Angeles, Washington and unilaterally transferred work formerly assigned to clerical positions and performed by clerical employees to the Agent, an employee outside the Clerks' Agreement.
2. Carrier shall return the clerical work at Port Angeles to the scope and application of the Clerks' Agreement and the employees covered thereby.
3. Carrier shall compensate furloughed employee M. J. Shaw for eight (8) hours at the rate of Clerk Position No. 6535 for each day the Agent performs such clerical work retroactive sixty (60) days from June 26, 1962, and for each day subsequent thereto that the violation continues.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 12, 1962 the station force at Port Angeles, Washington consisted of the following:

Agent
Cashier — Position No. 6534
Clerk — Position No. 6535

On November 6, 1961, due to the Agent taking over the duties of the Cashier position, the occupant of that position at that time, Employee Robert Davidson, wrote the Agent, Mr. E. R. Emanuel, the following letter:

"As the majority of the reports formerly made by the cashier has now been taken over by you, I note that over the week end you have also absorbed Form 1115, and Form 1720, on Friday you did all of the Rayonier billing, leaving the cashier's position non-existent.

The object of this letter is to ascertain what you have in mind, and if you have any grievance, take it out in the open.

December 1, 1927 Agent
Day Operator

May 1, 1939 Agent

April 1, 1947 Agent

September 1, 1949 Agent

The first Agreement with the Clerks' Organization on this property became effective January 1, 1920 or, in other words, almost 17 years after the first Telegraphers' Agreement and 2 years after Port Angeles first appeared in the Telegraphers' Agreement revised effective October 1, 1918, and has subsequently been revised on February 1, 1922, November 1, 1929, January 16, 1946 and September 1, 1949.

Clerk Position No. 6535 was established at Port Angeles, Washington for the express purpose of assisting the Agent and/or Operators in the performance of that part of the station work which, because of the volume then involved, the Agent and/or Operators were unable to perform.

Prior to April 13, 1962, therefore, the Carrier maintained a station force at Port Angeles, Washington which consisted of:

Agent
Cashier Position No. 6534
Clerk Position No. 6535

However, when the station work in excess of the capacity of the Agent or, in other words, the portion participated in by the clerk, ceased to exist, the need of the Agent for the assistance of the clerk also ceased to exist and Clerk Position No. 6535 was abolished April 13, 1962.

There is attached as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of November 13, 1962.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier did not raise the Time Limit Rule issue on the property. By reason of the decisions of the National Disputes Committee, non-compliance with Article V of the August 21, 1954 National Agreement is waived where neither or both parties failed to raise the question on the property. For this reason, the claim must be adjudicated on the merits.

Prior to April 13, 1962, the station personnel at Port Angeles, Washington, consisted of Agent, Cashier Position No. 6534, and Clerk Position No. 6535. Effective on that date, Clerk Position No. 6535 was abolished.

The record shows that the work which the Clerk had done was work which the Agent had delegated to him and was work which the Agent had always performed. It was not work which by history, custom and practice, had been performed solely by employees covered by the Clerks' Agreement.

It is a well settled principle that the burden of establishing facts to sustain a valid claim rests with the Petitioner. The Employees have failed to meet this

proof. There is no probative evidence in the record to show that the clerical work performed by the Agent was that which belongs exclusively to employees covered by the Clerks' Agreement. The claim, accordingly, must 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 Carrier did not violate the Agreement.

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.