

Award No. 19130
Docket No. TE-14390

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

(Formerly The Order of Railroad Telegraphers)

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Baltimore and Ohio Railroad, that:

1. Carrier violated and continues to violate the Agreement between the parties when, beginning on January 16, 1961, it established an Operator-Clerk position in the Chief Dispatcher's office at Akron, Ohio, and failed and refuses to assign it to an employe holding seniority under the Agreement in accordance with the rules of said Agreement.

2. Carrier shall be required to bulletin and assign this position in accordance with the provisions of the applicable rules of the Telegrapher's Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, as shown in the printed book, reprinted June 16, 1960, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Akron, Ohio was placed on the Akron Division of this Carrier at the time that Division was created, about 1922. In setting up the Chief Train Dispatcher's Office at Akron, two positions were moved from other points to assist the Chief Dispatcher; a Clerk position was abolished in the Dispatcher's office at New Castle, Pennsylvania and reestablished in the Chief Dispatcher's Office at Akron, an Operator-Clerk's position was abolished at Cleveland, Ohio and reestablished in the Chief Dispatcher's Office at Akron. The first position on the day shifts was purely clerical work (assisting the Chief Dispatcher by typing various reports for which the Operators and the Chief Dispatcher had accumulated information). The second position of Operator-Clerk was on the night shift. The occupants thereof used the telegraph and telephone circuits to accumulate information and composed, sometimes transmitted, reports to the General Offices; the principal report being the 2656 report, which is a complete telegraphic report on the movement of trains during the preceding twenty-four hours. Reference to such positions on the local level has generally been

duties of that position were basically the same during that period and have remained so subsequent to the reestablishment of the position as of January 16, 1961. No protest was ever made by the Committee representing the Order of Railroad Telegraphers concerning the existence of this clerical position until the instant claim arose.

There is no question but that the clerical position restored in the Dispatcher's office as of January 16, 1961, was the same position that had been in existence up to 1959. For example, when this claim arose in a Memorandum of Conference held in the Superintendent's office at Akron, Ohio, on March 6, 1961, the "JOINT STATEMENT OF FACTS" agreed to between Superintendent H. I. Walton and District Chairman R. E. Brown of the Order of Railroad Telegraphers read that:

"On January 16, 1961, the clerk's position in the Chief Dispatchers' Office, Akron, Ohio was reestablished with the advent of the consolidation of the Akron and Chicago Divisions. This job was formerly a clerks' job until abolished several years ago." (Emphasis ours.)

Despite this unqualified admission on the part of the District Chairman of the ORT that "This job was formerly a clerks' job until abolished several years ago," nonetheless the Order of Railroad Telegraphers now petitions this Division, charging an agreement violation and asking that "* * * Carrier shall be required to bulletin and assign this position in accordance with the provisions of the applicable rules of the Telegraphers' Agreement * * *."

OPINION OF BOARD: On January 16, 1961, upon consolidation of the Akron and Chicago Divisions, a position formerly occupied by a clerk was re-established in the Chief Dispatcher's Office at Akron, Ohio. A similar position occupied by a telegrapher in the Chief Dispatcher's office at Garret, Indiana, was eliminated by the consolidation of Divisions.

Carrier assigned a clerk to the re-established position at Akron. The Telegraphers complained that this was improper, and that the job should be assigned to a telegrapher. This claim was denied by Carrier, and is now before the Third Division for decision.

Procedural contentions by the Carrier have been satisfied, the Division having afforded the Clerks a full opportunity to be heard.

The record shows that handling on the property produced a comprehensive "Memorandum of Conference" in which the opposing views of the parties were clearly revealed. Historically, both clerks and telegraphers have been employed in the Akron office. The record, however, is extremely vague as to the distribution of work between employees of the two crafts.

Essentially, the position of the petitioner is that the duties assigned to the clerk include a considerable amount of work involving the handling of "communications of record," and that such work belongs to telegraphers by virtue of the scope rule, hence their contention that the job should be filled by a telegrapher. Both points are contested by the respondent, thus putting the petitioner to his burden of proof.

The record contains many assertions by the petitioner, but nothing in the way of evidence of probative value to support those assertions. This Board has held many times that mere assertion without proof can not prevail. See Awards

12902 and 16529 for particularly clear discussions of the requirement that the petitioner must prove his case by competent and probative evidence.

The claim must be denied for failure of proof. Because of the particular circumstances herein involved, this decision will have no precedential value in other cases.

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 no violation of the Agreement is shown by the record.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.