

C O P Y

ORG. FILE 8-1-CH  
CARRIER FILE D-2061  
NRAB FILE CL-8012

AWARD NO. 5  
CASE NO. 5

SPECIAL BOARD OF ADJUSTMENT NO. 194

PARTIES     The Brotherhood of Railway and Steamship Clerks,  
             Freight Handlers, Express and Station Employees  
TO

DISPUTE     St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the terms of the currently effective Agreement between the parties when on August 5, 1954 it abolished the position of cashier at Chaffee, Missouri and unilaterally assigned the duties thereof to the Agent who holds no seniority or other rights under the Clerks' Agreement without conference or agreement.

(2) Work normally attached to the Cashier's position as of August 5, 1954, be restored to clerical employees, and

(3) Ray Fatchett, G. F. Martin, A. C. Grojean, R. H. Moore, William Daugherty, J. A. Southwick, I. E. Johnson and all others who were adversely affected be reimbursed for all losses sustained to be determined by joint check of Carrier's payroll and such other records as Carrier may deem necessary to accurately determine wage losses of employees by reason of this violation until corrected.

FINDINGS: Special Board of Adjustment No. 194, upon the whole record and all the evidence, finds and holds:

The Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

In 1954, by reason of a decrease in station business and revenues at Chaffee, Missouri, the Carrier abolished a Clerks' Cashier position, and assigned the duties of the position to the Agent, who had no rights under the Clerks' Agreement and who, effective October 1946, had been placed within the scope of an agreement between the Carrier and The Order of Railroad Telegraphers as a partially excepted supervisory position. The Cashier position had been an established clerical position at this station for over 30 years.

The Agent was not assigned any telegraphic duties, there being 3 telegraphers assigned around-the-clock in the General Office Building a block or so away from the Freight and Passenger Station where, after the abolishment of the Cashier position, there remained the Agent and 3 Yard Clerks and one Check Clerk.

First. The Carrier has taken and preserved a position that this Board may not issue a sustaining award unless and until notice has been given to all interested parties involved in this dispute.

The record does not disclose the giving of any such notice and this Board has heard only the two parties shown to have appeared.

There are numerous Adjustment Board awards and court decisions on this subject. This case is on the docket before us and we have felt under obligation to dispose of it on the merits of what is before us. If we have exceeded our authority in doing so, appeal to higher authority than ours is open to anyone who may be so advised.

Second. The scope rule contained in this agreement has remained substantially unchanged since its initial adoption in July 1922, although both parties have since sought to amend it. The Carrier has sought to amend it with a proposal to

"Establish a rule or amend existing rules to recognize the Carriers' rights to assign clerical duties to telegraph service employees and to assign communication duties to clerical employees."

and the Organization has sought to amend it with a proposal reading

"Positions or work within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of the rules, except in the manner provided in Rule 87."

Both of these proposals would have affected or modified the application of existing Adjustment Board awards (See Award 7129). Each of these proposals represents the point of view of the proposing party, but neither party has ever succeeded in translating either of these proposals into an amendment of this agreement.

The rule in question here is a general scope rule. Such being the case, the meaning and scope of the rule must be determined by that work which has been traditionally and customarily performed by the occupants of the positions involved (Award 4827 this property) and by applicable awards of the Third Division of the National Railroad Adjustment Board.

Third. The cashier work in question here was clerical work and it has customarily and traditionally been performed by a Cashier position established under the Clerks' Agreement.

When the work of such a position decreases, as it did here, the position may be abolished and the remaining work may be assigned to other Clerks or, in certain circumstances, to Telegraphers. Award 615, which established the right of telegraphers to perform clerical duties, squarely conditioned the right, among other things, upon the continued performance of telegraphic duties:

"... in diminution of force; a clerk cannot undertake or be accorded telegrapher's duties, but the converse is not true; on the contrary, where two positions are involved, one that of a clerk and the other, that of a telegrapher, and one is to be abolished, the telegrapher -- if any telegraphic duties remain -- has the absolute right to the position, including the assumption of the remaining clerical duties . . . It follows from what has been said that likewise on the complete disappearance of telegraphic work, a position till then occupied by a telegrapher-clerk must be thrown open to bidding to the clerks instead. It automatically becomes a clerk's position on the disappearance of the telegraphic duties."

Since the Agent performed no telegraphic duties, there was no basis under the doctrine of Award 615 for the assignment of this cashier work to him. In these circumstances the assignment to the Agent was a pure-and-simple assignment of this Cashier work to a supervisory or excepted position.

Fourth. A clerical position, which has been created for the purpose of furnishing incidental assistance to a supervisory or excepted position, may be abolished and the clerical work may be returned to the supervisor when the need for incidental assistance ceases (Awards 1593 and 5509 both on this property; also Award 931).

But it does not appear that the work of this Cashier position ever was normally incidental to the performance of the Agent's position within the meaning of the awards next above cited (see Award 7132 this property); and this was not a one-man station.

It follows that the work under claim was improperly assigned to the Agent. While this award sustains Item 1 and 2 of the claim, the Carrier may sufficiently comply with this part of the award and the Agreement, without restoring the Cashier position, if the work be assigned to and performed by employees entitled thereto.

Fifth. Claim is made (Item 3) on behalf of 7 named claimants and "all others who were adversely affected" the losses to be determined by joint check.

If a violation of the Agreement is established, a claim on behalf of "those adversely affected" is a sufficient statement of claim and a joint check is in order (Awards 4513, 4821 and 5630).

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In addition to Fatchett, Item 3 of the claim names as adversely affected: Martin and Grojean who suffered seniority displacement moves; and Moore, Daugherty, Southwick and Johnson who were on the extra list.

The claims of the four men on the extra list are remote and conjectural and should be denied. Subject to verification and ascertainment of amount on joint check, the claims of Fatchett, Martin and Grojean should be sustained.

A W A R D

Items 1 and 2 of the claim sustained in accordance with the foregoing findings.

Item 3 of the claim sustained as to Fatchett; denied as to Moore, Daugherty, Southwick and Johnson; and remanded as to Martin and Grojean for disposition in accordance with the foregoing findings.

/s/ Hubert Wyckoff  
Chairman

/s/ T. P. Deaton  
Carrier Member

/s/ F. H. Wright  
Employee Member

Dated at St. Louis, Missouri, November 20, 1957.