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AWARD NO. 12
CASE NO. 12

SPECIAL BOARD OF ADJUSTMENT NO. 174

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

TO

DISPUTE The Atchison, Topeka and Santa Fe Railway Company

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

(a) Carrier violates the rules of the current Clerks' Agreement at Oceanside Station, California, when it requires and permits Telegraphers to make a yard check twice daily; and,

(b) Mr. Fred Christensen shall now be compensated for 4 hours per day at the punitive Yard Clerk rate commencing June 10, 1955, and continuing until such time as violation of Agreement rules is corrected.

FINDINGS: Special Board of Adjustment No. 174, 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.

The yard at Oceanside is approximately three-quarters of a mile long and yard checks, which were made twice daily, consumed approximately two hours.

Prior to May 1942 the station force consisted of one clerical employe (a Cashier) and five telegrapher positions (including an Agent and a Teleg-Apprentice).

After May 1942 there were always a number of clerks regularly employed at Oceanside, ranging from 3 to 14, including a Yard Clerk (1944 - 1946).

Between 1942 and the date of claim a number of changes in the telegraphic positions occurred. The Telegrapher-Clerk positions were maintained in the station until October 24, 1947 when they were abolished. From October 24, 1947, to August 29, 1954, three Telegrapher-Clerk-CTC-Operator positions, located in the CTC building 150 feet south of the station, performed all communications service and did not perform any clerical work.

Effective with the removal of the CTC machine from Oceanside on August 29, 1954 the three Telegrapher-Clerk-CTC-Operator positions were abolished and two Telegrapher-Clerk positions were reestablished in the station.

On the date of claim the station force consisted of:

Agent	7:45 AM - 4:45 PM
Cashier	7:00 AM - 4:00 PM
Telegraph-Clerk	8:00 AM - 4:00 PM
Telegraph-Clerk	6:00 PM - 2:00 AM
Baggage-man	8:00 AM - 5:00 PM
General Clerk	8:00 AM - 5:00 PM
Ticket Clerk	11:00 AM - 8:00 PM
Ticket-Freight-Clerk	2:30 PM - 11:00 PM
Warehouseman	5:00 AM - 1:30 PM
Baggage-man	12:00 N - 9:00 PM

In practice yard checking at Oceanside has been performed by both crafts: by Telegraphers prior to 1942 and by Clerks from 1942 to 1954. When the Carrier reestablished the two Telegrapher-Clerk positions in 1954 and assigned yard checking to them, this claim ensued. The claim covers the period June 10, 1955 to September 19, 1955 when the Carrier reassigned yard checking to the Clerks.

First. While this dispute was pending before the Third Division the Carrier Members moved that "proper notice under Section 3 First (j) of the Railway Labor Act, amended, (be given) to other parties involved in the proceedings"; but the motion failed to carry and it does not appear that any such notice has ever been given.

For the reasons stated in S.B.A. No. 174 Award 1 "First", we pass to consideration of the merits.

Second. The claim covers only the period June 10, 1955 to September 19, 1955 when the Carrier reassigned yard checking to the Clerks.

The Organization contends that this action taken on September 19, 1955 amounted to a confession by the Carrier of the validity of the claim, but we do not so view it and, therefore, pass to consideration of the merits.

Third. Clerical work at this station, including yard checking has been traditionally and customarily performed by both crafts. As communications facilities were transferred from the station to the CTC building in 1947 and then back to the station in 1954, telegraphers simply followed their work. They took no clerical work with them to the CTC building; but when they returned to the station, the right to perform clerical work flowed back to them (S.B.A. No. 174 Award 5).

The essential question presented by this claim is whether the Telegrapher-Clerks had the right to make yard checks in the circumstances disclosed by this record.

Telegraphers are not disentitled to perform outside work as such (Award 635).

Whether yard checking could properly be assigned to Telegraphers depends upon whether the outside work was within reasonable proximity of the telegraph office and whether the performance of such outside work would interfere with the performance of telegraphic duties.

What is "reasonable proximity" is a question of fact in each particular case. In practice at Oceanside, the yard checking in dispute has not been treated as the exclusive work of Clerks. In the circumstances disclosed by this record we are unable to conclude that the yard checking at this particular station was not in reasonable proximity to the telegraphers' post or that the performance of this outside work by Telegraphers interfered with the performance of their telegraphic duties.

A W A R D

Claim denied.

/s/ Hubert Wyckoff
Chairman

I dissent:

/s/ F. D. Comer
Carrier Member

/s/ W. Ray Clark
Employee Member

Dated at Chicago, Illinois October 7, 1959.

COPYEMPLOYEE MEMBER'S DISSENT IN AWARD NO. 12

In this Award, the majority dealt with the term "reasonable proximity" and came to a conclusion that the undersigned deems to be in error. Webster's dictionary defines "proximate" as "Very close; as in space, time, order meaning, etc.; often, nearest; next preceding or following" and defines "proximity" to mean "State of being next or very near; close propinquity." While in the Yard checking cars, the Telegrapher-Clerk was neither "very close" in space or time nor was he "next" to or "very near" or "close" to the post of duty, (the communication instruments, train order board or signals) and it was physically impossible for him to perform his telegraphic duties while so engaged. See S.B.A. No. 194, Awards 7, 13 and Interpretation No. 1 of Award 11.

/s/ W. Ray Clark

W. Ray Clark, Employee Member