

C O P Y

ORG. FILE 2-36  
CARRIER FILE 140-465-30  
NRAB FILE CL-3126

AWARD NO. 6  
CASE NO. 6

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 violated the rules of the Clerks' Agreement at Nemo, Illinois, when on February 5, 1954, it abolished Clerk Position 1640 and assigned the work from this position to employees not covered by the Clerks' Agreement; and,

(b) Clerk Position 1640 shall now be reinstated and the work returned to the scope of the Clerks' Agreement; and,

(c) Carrier shall now pay nine (9) hours per day, based upon three (3) calls at three (3) hours for each call, seven (7) days per week from February 5, 1954 until violation is corrected to H. G. Pettett; and,

(d) \*The Clerks that were displaced because of this violation and who may have suffered reduction in pay shall be reimbursed for such losses; and,

(e) \*The Clerks that are required to be away from their home terminal as result of this violation shall be reimbursed for all travel and away-from-home expenses.

\*NOTE: To be determined by joint check of payrolls and other Carrier records.

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.

Nemo is an interchange point with the M&StL and is operated as a joint station. Prior to February 5 1954 the station forces consisted of:

Agent-Telegrapher	3 AM - 4 PM
Telegrapher-Clerk	7:45 AM - 3:45 PM
Telegrapher-Clerk	3:45 PM - 11:45 PM
Telegrapher-Clerk	11:45 PM - 7:45 AM
Clerk Position No. 1640	11 AM - 7 PM
Clerk Position No. 1645	2 AM - 10 AM

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All of the outside yard work (yard check, taking seal records, listing cars and general yard work) was assigned to the two clerical positions. Each of the telegrapher positions performed clerical work to fill out their time. The Agent-Telegrapher performed no outside yard work except weigh or handle livestock during his shift; and he performed no regular telegraphic duties except to assist.

The Carrier's records, which only go back to March 1 1925, show the station forces on that date as follows:

Agent-Telegrapher  
Telegrapher-Clerk  
Telegrapher-Clerk  
Telegrapher-Clerk  
Clerk  
Clerk  
Clerk

From that time the telegraphic positions have remained constant but the clerical positions have been abolished and re-established as follows:

<u>Clerk Position No. 1640</u>	<u>Abolished</u>	<u>Re-established</u>
	August 29 1940	November 16 1940
	June 20 1948	November 8 1948
	February 4 1954	

  

<u>Clerk Position No. 1645</u>		
	February 17 1926	July 25 1926
	December 25 1931	July 5 1932
	December 1 1934	September 30 1935
	March 1 1938	March 8 1942
	August 4 1954	-

When Clerk Position No. 1640 was abolished on February 5 1954, the duties of the position were distributed among the remaining positions as follows: to the Agent Telegrapher (50"); to the first trick Telegrapher Clerk (1'00"); to the second trick Telegrapher-Clerk (1'00"); to the third trick Telegrapher-Clerk (25"); and to the Clerk Position No. 1645 (40"). The Organization's check shows more hours. The Carrier's check shows the performance of 4'10" of telegraphic work during the first trick.

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. When Clerk Position No. 1640 was abolished, there remained one clerical position and four telegrapher positions, two of which were assigned to the first trick.

There was only about four hours of telegraphic work during the first trick; and there is no showing that the services of two telegraphers were required during that trick. It also appears that the assignments of the Clerk Position No. 1645 and the first trick Telegrapher-Clerk position overlapped for 2'15" from 7:45 AM to 10 AM.

For the reasons stated in S.B.A. No. 174 Award 5 the claim should be sustained to the extent hereinafter indicated.

Third. The claimant here is Pettett and he is also the claimant in S.B.A. No. 174 Award 7. This comes about by reason of the fact that when Clerk Position No. 1640 was abolished on February 4 1954, Pettett exercised displacement privileges on Clerk position No. 1645 which set in motion a series of displacements that are the subject of Items (d) and (e) of the claim. When Clerk Position No. 1645 was abolished on August 4 1954, Pettett filed the claim which is the subject of S.B.A. No. 174 Award 7.

Item (c) of the claim is for three calls per day but the evidence supports no more than a single continuing violation of the Agreement during the first trick only.

Items (c) and (d) of the claim are for monetary loss suffered by all clerks who were displaced. This Agreement does not provide liquidated penalties for violation of the Agreement; but Third Division Adjustment Board awards have nonetheless provided penalties because "experience has shown that if rules are to be effective there must be adequate penalties for violation" (Award 685). It follows that the Carrier is not relieved of all obligation to pay any penalty because Claimant Pettett immediately displaced on Clerk Position No. 1645 and suffered no monetary loss. By the same token, it follows that the Carrier did not incur penalties in favor of everyone who may have been consequently affected by the abolishment of Clerk Position No. 1640. We hold that the payment of Pettett's claims will satisfy all of the Carrier's obligations arising by reason of this violation of the Agreement (Award 5652; compare Awards 4393 and 1605).

A W A R D

- Item (a) of the claim sustained.
- Item (b) of the claim denied.
- Item (c) of the claim sustained for the period February 5 1954 to August 4 1954, to the extent of one minimum call each day.
- Item (d) of the claim denied.
- Item (e) of the claim denied.

/s/ Hubert Wyckoff  
Chairman

/s/ A. D. Stafford  
Carrier Member

/s/ J. D. Bearden  
Employee Member

Dated at Chicago, Illinois December 16 1953