

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad Company.

1. That Carrier violated Clerks' Agreement when on September 6th, 1937, it abolished the position of Bill Clerk, rate \$5.29 per day at Paragould, Ark., and removed the duties of said position out from under the scope and operation of the Clerks' Agreement by assigning same to an employe not covered by the Clerks' Agreement.
2. That the position of Bill Clerk, rate \$5.29 per day shall be re-established and that employes affected by the illegal abolishment of same be reimbursed for all wage losses retroactive to September 6th, 1937."

STATEMENT OF FACTS: Prior to September 6, 1937, there existed at Paragould, Ark., position of Bill Clerk, rate \$5.29 per day, assigned hours 11:00 A. M. to 4:00 P. M., and 5:00 to 8:00 P. M.; which position performed routine local freight office work from 11:00 A. M. to 4:00 P. M. and passenger station and local freight office work 5:00 to 8:00 P. M. Effective September 6, 1937, the carrier nominally abolished or discontinued this position, and concurrently therewith instructed the second trick telegraph operator, located at the yard office, approximately one mile distance from the freight office and passenger station, to report for work at the freight station and perform the duties theretofore assigned to and performed by the position of Bill Clerk. Concurrently, also the assigned hours of the telegrapher were changed to 2:30 to 10:30 P. M.

At the time of this change, the telegrapher took over the four hours per day of work formerly performed by the Bill Clerk and in addition thereto continued to perform one hour and forty-five minutes of yard clerk's duties at the yard office, which work had been arbitrarily removed from the scope of the clerks' agreement sometime prior thereto; with the result that subsequent to September 6, 1937, the telegrapher performed regularly, five hours and forty-five minutes per day of clerical duties covered by the scope of the current agreement between the carrier and the Brotherhood of Railway Clerks.

There is in evidence an agreement between the parties bearing effective date of August 1, 1926, and the following rules thereof read:

Yard Clerk, rate \$4.64 per day,	abolished April 22, 1929
Caller, rate \$3.16 per day,	abolished April 22, 1929
	Reinstated July 27, 1929
	Abolished June 30, 1930
	Reinstated January 20, 1935
	Abolished June 12, 1936
	Reinstated October 1, 1936
	Abolished April 14, 1937
	Reinstated June 1, 1937
	Abolished July 1, 1937
Steno-Clerk, rate \$4.39 per day,	abolished March 5, 1934

Force as of this date (September 10, 1937):

Agent	\$240.20 per month
Cashier	5.79 per day
General Clerk	4.79 " "
(3) Telegraphers	.74 per hour
Reconsigning Clerk	5.29 per day
Caller	3.56 " "

"In the presentation of this case to the Carrier the Employees contend:

"Our Organization contends that the agreement between the organization and the Carrier contemplates by its terms and intent that all clerical work shall be performed by the clerical employees for whose benefit the agreement was made subject and pursuant to its provisions. We contend that it is improper for the carrier to remove clerical work from the scope of the agreement and assign it to other employees who hold no seniority rights under the Clerks' Agreement.

"We request, therefore, that the bill clerk's position at Paragould be restored and that the occupant of the position on September 5th and others affected by reason of this improper arrangement be compensated for wage loss sustained because of same."

"The reduction in force at Paragould on September 10, 1937, and the resultant rearrangement of the personnel of the station force, was in no wise whatsoever different than has been the practice during years past, as noted by the fluctuating changes in force made from time to time to handle the business of the railroad at the Paragould station and without complaint from the Employees, notwithstanding the identical rules of the wage agreement that are now in effect and cited by the employees to sustain their contentions were in effect since 1926.

"We have no wage agreement rules nor practices thereunder that would sustain the Employees' contention that all clerical work shall be performed by the clerical employees covered by the scope rule of wage agreement with that organization."

OPINION OF BOARD: This case involves the question of the right of a carrier to assign clerical work to telegraphers. The subject was given extended consideration in Award No. 615, to the opinion in which reference is here made to avoid repetition. It was there held in substance that there is a well recognized exception to the exclusive right to perform work covered by the Clerks' Agreement consisting in the right recognized from the inception of the agreement of the carrier to assign clerical work to telegraphers whose time was not fully occupied to fill it out. Broad language was there used to the effect that the only limit was the telegraphers capacity. But it should be understood that the opinion was dealing with the situation there involved, and there is not the remotest inference drawable from what was there said that would sanction any such practice as that indulged here under the guise of the principles recognized by that award.

The practice there referred to as being abundantly proven and a matter of common knowledge was the assignment of clerical work, existing or arising at or immediately adjacent to the post of the telegrapher, to him.

There was no shadow of proof nor of thought in that case that a telegrapher may be detached from his post and sent a mile away to an entirely unrelated location to take over a half a day of straight clerical work to facilitate the abolition of a clerical position. The reason for the existence of the practice recognized as legitimate is the fact that frequently a telegrapher, altho required to be available at his post all day, may be occupied only intermittently at telegraphing and otherwise have idle time. To suppose such a principle might be applied to permit him to shut down and desert his instrument, when four hours of his assignment had elapsed, and go elsewhere to perform other work would not only be in direct contradiction of the reason of the rule, but would also amount to the establishment of short hour assignments in both crafts.

As well might it be asserted that a telegrapher in a general office building can be worked half a day at his profession and then sent over to the general accounting department to work half a day as a clerk.

It is significant that in this case (unlike their attitude in Award No. 615) the *Telegraphers make no claim of a right to perform clerical work under such circumstances as those here involved.*

In the instant case there is no evidence worthy of that description to the effect that the practice here involved is a part of the nation-wide general practice upon which the limitation was founded by Award No. 615. It cannot be over-emphasized, as stated there, that only upon the most conclusive of proof should the Board find such a limitation.

The limits of the legitimate practice of assigning clerical work to telegraphers are (or at least so it was supposed in Award No. 615) so well known to practical railroad men that there ought to be no confusion in recognizing them, and if such confusion does result, it is believed that it will be due, generally, to efforts to stretch sound principles beyond their reasonable application.

The conclusion of the Board is that the practice here involved is not within the limitation on the Clerks' Agreement and consequently involves an encroachment thereon of the kind consisting of taking work from under an agreement, so often condemned by the Board.

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 violated the Clerks Agreement in the premises.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1938.