

**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

1. J. A. Scanlon, General Clerk, General Yardmaster's Office, Kansas City, Mo., for wage loss sustained May 14th to June 3d, inclusive 1937, as hereinafter stipulated.

2. L. R. Dutcher, Special Report Clerk for wage loss sustained May 21st to June 30th, inclusive 1937, as hereinafter stipulated.

account violation of existing wage agreement, especially Rules 1 and 2."

EMPLOYES' STATEMENT OF FACTS: Prior to May 14, 1937, there existed, among others, an established position of General Clerk, General Yardmaster's Office—Zone 2, Kansas City, rate \$5.24 per day, assigned hours 9:00 A. M. to 1:00 P. M., and from 2:00 to 6:00 P. M., seven days per week, which position was occupied by Clerk J. A. Scanlon. There also existed an established position of Inbound Clerk—Topping Avenue Yard Office, Kansas City, rate \$5.24 per day, assigned hours 7:00 A. M. to 3:00 P. M., seven days per week, which position was occupied by Clerk F. F. White.

On May 13, 1937, bulletin was posted, and among other things, advised all concerned that the position of General Clerk, General Yardmaster's Office, Topping Avenue, assigned hours 9:00 A. M. to 6:00 P. M., was discontinued, effective May 14. The duties of this position were thereupon assigned to other positions in the offices which resulted in a reassignment of work to several employees. In this rearrangement of work, from two to five hours of the work per day was assigned to the Assistant Agent, a position excepted from the current agreement, by agreement between the parties.

Effective May 14, J. A. Scanlon, former occupant of position of General Clerk, exercised his seniority rights to position of Interchange Clerk, rate \$4.94 per day, which resulted in a wage loss to him of thirty cents per day, May 14 to June 3, both dates inclusive, 1937.

Effective May 19, 1937, position of Inbound Clerk, Topping Avenue, hours 7:00 A. M. to 3:00 P. M., occupied by F. F. White, was discontinued, and the work reassigned to other employees in the office. Effective May 21, F. F. White exercised his seniority upon position of special report work, rate \$5.79 per day, thereby displacing L. R. Dutcher, who exercised his seniority rights upon position rated at \$4.89 per day, thereby suffering wage loss of 90¢ per day from May 21 to June 30, both dates inclusive, 1937.

"The Employes' contention that there was a violation of Rules 1 and 2 of wage agreement is mythical. There certainly cannot be read into either one of these rules, by practice or otherwise, that a supervisory officer or clerk in charge of a yard office, such as the Assistant Agent at Kansas City, is prevented from functioning as a supervisory officer in charge of a number of yard clerks in a yard office from checking the bill boxes and assisting the various clerks with work on their respective desks as the exigencies of the business demands to expedite the movement of cars through the terminal."

OPINION OF BOARD: This Board has repeatedly held that the carrier is within its right in abolishing positions when the work has disappeared or substantially reduced in volume. The Board has also repeatedly held that the carrier cannot discontinue or abolish positions and assign the duties thereof to employes not covered by the agreement.

It is shown in the record of this case, and not disproven, that with the abolishment of the positions of General Clerk and Inbound Clerk and the reassignment of duties, that the Assistant Agent, an employe not within the purview of the agreement, took over and performed a portion of the clerical work formerly performed by employes within the agreement and that the Assistant Agent continued to perform some of that work until the positions of General Clerk and Inbound Clerk were reestablished.

The removal from the scope of the current agreement of the work assigned to the Assistant Agent was done in violation of that agreement. The carrier having violated the current agreement, it should reimburse employes who suffered losses as the result thereof.

The reasons why the displaced employes did not place themselves better as the carrier suggests they might have do not appear; however, had they done so it would probably have resulted in claims for larger losses in favor of other employes.

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 employes involved in this dispute are respectively carrier and employes 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 current agreement as indicated in the Opinion.

AWARD

Claims 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.