

Award No. 751
Docket No. CL-744

**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

(Guy A. Thompson, Trustee.)

STATEMENT OF CLAIM: "Claim of System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes of the Missouri Pacific Railroad Company, that Carrier violated the Clerks' Agreement.

1. When on December 16th, 1937, it abolished the position of General Clerk, rate \$5.39 per day in the local freight office at Wichita, Kansas, and concurrently, the chief clerk (an excepted position) rate \$180.00 per month, and the Agent absorbed four hours and forty-five minutes (4'45'') per day of the general clerk position duties.
2. Concurrent with the abolishment of the General Clerk position a Receiving Clerk in the warehouse, rate \$4.79 per day, assigned hours 9:00 A. M. to 1:00 P. M.—2:00 P. M. to 6:00 P. M., six days per week was brought into the freight office at 2:00 P. M. each day and assigned to the performance of duties and work of the General Clerk position until 5:00 P. M.
3. When it failed to notify the local chairman of the abolishment until December 17th, 1937, per Superintendent's notice addressed to the local chairman dated December 17th, 1937, copy attached designated as Exhibit 'A.'

"That the position of General Clerk, rate \$5.39 per day shall be restored and,

1. Clerk, Mrs. Irene Tucker reimbursed for wage loss in the amount of difference in \$4.79 per day and \$5.39 per day, effective December 20th, 1937, until the position of General Clerk is restored.

NOTE: Claim of Mrs. Tucker effective December 20th, 1937 for reason that she laid off of her own accord December 16th, 17th and 18th.

2. Clerk, Miss Helen Jones be reimbursed for wage loss incurred at the rate of \$4.79 per day less amounts earned from other employment effective December 20th, 1937.
3. The occupant of Receiving Clerk position be compensated in the amount of difference in \$4.79 per day and \$5.39 per day effective December 16th, 1937, for each day assigned to perform General Clerk's work 2:00 P. M. to 5:00 P. M."

EMPLOYES' STATEMENT OF FACTS: "On December 15th, 1937, the station clerical force at Wichita, Kansas Local Freight Office, exclusive of warehouse and platform forces, janitors and porters was as follows:

"The employes also contend that a receiving clerk (check clerk) be compensated in the amount of the difference between \$4.79 per day and \$5.39 per day effective December 16, 1937 account performing the general clerk's work from 2:00 P. M. to 5:00 P. M.

"Prior to December 15, 1937 when the position of general clerk was abolished, for reasons stated above, a check clerk was used in the freight house an average of one hour per day on clerical work; subsequently he was assigned to perform approximately 2'30" per day which consisted of making up form 7403 report (allowances made to consignors and contract draymen). This work, as well as other work units in the office, is supervised by the chief clerk and there is no schedule rule that would require paying this check clerk a higher rate just because he was assigned for a portion of his day (does not work in excess of 8 hours daily) to do some other miscellaneous clerical work as he is only used in the freight house so as to utilize his services for the full 8 hour period for which he is compensated.

"The clerks further contend that the local chairman was not advised until December 17th of the force reduction that was made effective at close of business December 15th. The notice to the local chairman was simply a confirmation of the action taken of which he had prior knowledge and is a procedure followed on our Wichita Division for a number of years.

"There is no merit in the employes' contentions in this case, but is an attempt to stretch the rules of the wage agreement to bring about a condition whereby the carrier cannot adjust its force of clerical employes in a freight station to meet conditions in keeping with its revenue, or in other words, the clerks' organization are attempting to stretch the application of the rules of the agreement to penalize the carrier by maintaining unnecessary positions for the handling of its business at a freight station thus preventing the carrier from handling its business in an efficient and economical manner as required by law."

OPINION OF BOARD: There is no substantial difference between the parties concerning the facts; i. e., that a position subject to the agreement and having full eight hours of work, was abolished and the work parceled out, four hours of it going to two excepted employes, the chief clerk, the agent (excepted under the Telegraphers' schedule) and three hours of it to a lower-rated employe; this without conference or attempt at agreement with the organization.

This Board has repeatedly held that a carrier may not arbitrarily take work from under the scope of an agreement. Such a prerogative would be destructive of the agreement. See Awards 631, 637, and 736.

Notwithstanding the carrier's contention that some of the work involved had been performed by the chief clerk before the general clerk position was established, the fact remains that when the latter position was established, it and its work automatically became subject to the agreement and, the work subsisting, they could be removed therefrom only by agreement of the parties.

The assignment of the three hours' work to a lower-rated employe was a violation of the intent of Rules 66, 68 and 76. The negotiated rates covering positions of course took into consideration the attendant duties, and if after agreeing upon the rates the carrier could switch the duties around in this manner, it could completely nullify the wage scale.

The four-hour line of demarcation between class 1 and class 2 employes provided by the scope rule has no bearing in the matter. If it were permissible to parcel out regularly three hours as here, no reason is perceived why it could not also be permissible to assign the whole eight hours out to three lower-rated employes in allotments of three, three, and two hours and thus procure the doing of work agreed to be worth \$5.39 per day for \$4.79.

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 scope, seniority, and other rules of the agreement, as indicated in the Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1938.