

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, 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 the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees of Missouri Pacific Railroad that Carrier violated the Clerks' Agreement,

1. When on January 1, 1938, 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 and assigned said duties and work to an employe not covered by the Clerks' Agreement.
2. When on January 12, 1938, it assigned to occupant of position of general clerk, rate \$4.79 per day, duties and responsibilities which prior to January 1, 1938 comprised the substance of the position of bill clerk, rate \$5.29 per day and failed to apply thereto the proper rate attaching to the bill clerk position.
3. When on January 12, 1938, it assigned clerical duties that prior to the night of January 12, 1938 had comprised the substance of position of general clerk, class one seniority roster—Memphis Division, rate \$4.79 per day to a caller, class two seniority roster—Memphis Division, rate \$3.56 per day, and posted bulletin instructions restricting the caller to three hours and fifty-nine minutes per day in the performance of clerical work.

"That position of bill clerk, rate \$5.29 per day shall be restored, and

1. Clerk, T. J. Crowley reimbursed for wage loss in the amount of difference in \$4.79 per day and \$5.29 per day, effective January 2, 1938, until the position of bill clerk is restored.
2. That W. J. Wood, occupant of the position of caller be compensated for difference in amount of \$3.56 per day and \$4.79 per day, January 13 to January 31st, 1938, inclusive.
3. That H. H. Joyner and other occupants of caller position on and after February 1, 1938, be compensated for the difference in caller's rate of \$3.56 per day and general clerk's rate of \$4.79 per day until dispute is adjusted."

EMPLOYEES' STATEMENT OF FACTS: "On December 31, 1937, the station clerical force at Paragould, Ark. Freight Depot was:

"Checking and trucking freight into cars for outbound movement, average 45" per day; carding and sealing cars, average 15" per day. This work was formerly handled by the trucker and warehouse foreman which positions were abolished in 1931.

"The remarks above are cited for the express purpose of calling to the Board's attention that at these local way stations, such as Paragould, it is not uncommon for a clerk, regardless of his payroll classification, to do the work of a railroad station clerk.

"There is, as heretofore stated, no merit in the employees' contentions, insofar as this phase of the case is concerned, and it is not supported by any rule violation as the employees contend, there being no rule to govern their contentions."

OPINION OF BOARD: The disputes between the parties leading to the filing of this claim grew out of a move of the carrier to reduce expenses. The carrier on Jan. 1, 1938, abolished the position of bill clerk, rate \$5.29 per day at Paragould, Ark., and concurrently therewith instructed a telegrapher, located at the yard office of carrier, approximately one mile from the passenger and freight depot, to report to the latter point each day and perform a substantial part of the duties (not to exceed four hours) formerly performed by the bill clerk. This method of handling the work continued until Jan. 12, 1938, when another change was made. The first item of the claim is based on the action of Jan. 1, 1938, and the remaining two items grew out of the action of Jan. 12, 1938.

At the time carrier assigned the telegrapher to take over a part of the duties of the bill clerk, it thought it had a right to do so under Award 615, of this Division of the Adjustment Board, wherein it was held that a carrier might assign to an employee under the Telegraphers' Agreement clerical work subject to the Clerks' Agreement (See also Award 635). However, that case involved assigning clerical work to a telegrapher in the same office where he and the clerk worked. Later this Division held in its Award 636 that this did not include the right to send the telegrapher to another office approximately one mile away to perform clerical work covered by the Clerks' Agreement. This latter award involved identical facts at the same station of the carrier, and carrier now concedes, and the Board finds that item No. 1 of this claim should be sustained.

Prior to Jan. 1, 1938, the clerical force at Paragould, Ark. comprised:

POSITION	RATE OF PAY	HOURS ASSIGNED
1 Cashier	\$5.79 per day	8:00 A.M. to 5:00 P.M.
1 Bill Clerk	5.29 " "	11:00 A.M. to 8:00 P.M.
1 General Clerk	4.79 " "	12:01 A.M. to 9:00 A.M.
1 Reconsigning Clerk	5.29 " "	11:00 P.M. to 7:00 A.M.
1 Tr. Crew caller	3.56 " "	9:00 P.M. to 5:00 A.M.

Employees holding the first three named positions were located at the passenger and freight station and employees holding the two latter named positions were located at the yard office. Following the abolition of the bill clerk's position on Jan. 1, 1938, and the assignment of part of his duties to the telegrapher, no change was made in the assigned hours of the other clerical employees. However, when the telegrapher was taken off this work, some changes in assigned hours were made and subsequent to Jan. 12, 1938, the clerical force and assigned hours were as follows:

POSITION	RATE OF PAY	HOURS ASSIGNED
1 Cashier	\$5.79 per day	8:00 A.M. to 5:00 P.M.
1 General Clerk	4.79 " "	4:45 P.M. to 1:30 A.M.
1 Reconsigning Clerk	5.29 " "	11:00 P.M. to 7:00 A.M.
1 Tr. Crew Caller	3.56 " "	1:00 A.M. to 9:00 A.M.

The second item of the claim in this case involves the right of the carrier to abolish the position of bill clerk and assign a substantial part of the work to a lower rated employe.

The record shows that there was no substantial difference in the character of work performed by the bill clerk and the general clerk, but for some reason not shown by the record, a different rate of pay was established in the wage agreement for the two positions. It is also clear from the record that when the position of bill clerk was abolished on Jan. 1, 1938, the telegrapher took over and performed part of the duties of this position. When the telegrapher was taken off this work on Jan. 12, 1938, the assigned hours of duty of the general clerk were changed so that he went to work shortly after the time at which the telegrapher had previously reported at the passenger station, and the general clerk took over the duties which the telegrapher had performed. The record does not show whether any of the other duties performed by the bill clerk, prior to the abolition of the position, were also turned over to the general clerk when his hours of duty were changed. That information is not necessary to a disposition of this item of the claim however, as the record shows that there was an overlapping of more than three hours in the assignments of time of the bill clerk prior to Jan. 1, 1938, and of the general clerk following the change in his assignment on Jan. 12, 1938, and that the duties previously performed by the bill clerk during this period were taken over and performed by the general clerk. In a case involving this same contract this Division held in its Award 751 that the assignment of three hours' work to a lower rated employe was a violation of the intent of Rules 66, 68, and 76 of the Agreement. The decision in that case is controlling here and is reaffirmed (See also Awards 236, 458, and 607).

When the carrier changed the assigned hours of the general clerk it also became necessary to change the assigned hours of the train crew caller and to assign to him certain duties previously performed by the general clerk. In the bulletin assigning these duties to the train crew caller the agent directed that:

"Caller not to exceed three hours and 59 minutes selling tickets for 27 and checking freight at freight house."

The scope rule divides the employes covered by the agreement into three classes, viz:

- (1) Clerks
- (2) Other office and station employes enumerated, and
- (3) Laborers employed in and around stations, storehouses and warehouses.

Train crew callers are enumerated in class (2) and as the character of the work to which an employe devotes a majority of his time determines his classification, it was necessary for the agent to restrict the time which the train crew caller could devote to the duties formerly performed by the general clerk to less than four hours to prevent the train crew caller from being entitled to the classification and pay of a clerk. Hence the instruction quoted above.

The record disclosed such hopeless disagreement between the parties as to the time actually devoted by the train crew caller to the duties formerly performed by the general clerk, that the Board asked that a joint check be made and submitted by the parties. This has been done. It shows that for the period Jan. 13th to Jan. 23rd, 1938, the caller devoted on the average four hours and twenty minutes of his time to performing duties formerly performed by the general clerk and the remaining three hours and forty minutes were devoted to his duties as train crew caller.

Carrier contends, however, that among the duties performed by the general clerk there were many duties that were not strictly clerical and would

have been performed by employees of class (2) or (3) had they been available, and in calculating the time devoted by the train crew caller to the duties of the general clerk the time consumed in performing these duties should be excluded. The Board is unwilling to indulge in such refinement. Should it do so it would also be necessary to review the duties of the position of train crew caller and determine which of those duties should also be classified as clerical. The record shows that the caller worked at the yard office and it was necessary for him to go to the passenger and freight depot, approximately one mile distant, to perform the clerical duties assigned him, all of which had theretofore been performed by the general clerk, and the Board is of the opinion that the time required to perform these duties is the best measure of the actual time this employee devoted to performing clerical duties. As the record shows that he devoted, on the average, more than four hours per day to the performance of said duties he was entitled to the higher classification and pay.

The Brotherhood also requests that all occupants of the caller position on and after Feb. 1, 1938, be compensated for the difference in the caller's rate of \$3.56 per day and the general clerk's rate of \$4.79 per day until this dispute is adjusted.

The Board is of the opinion that this matter should be referred to the parties to be settled in accordance with this opinion. The amount of time devoted to the respective duties is determinative of the compensation and the record contains no information as to the situation since Feb. 1, 1938.

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 items (1), (2), and item (3) to the extent indicated in the Opinion should be sustained. The claims of occupants of the train crew caller position on and after Feb. 1, 1938, should be referred to the parties to be settled in accordance with the Opinion.

AWARD

Items (1) and (2), and item (3) to the extent indicated in the Opinion are sustained. The claims of occupants of the train crew caller position on and after Feb. 1, 1938, are referred to the parties for settlement in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of January, 1939.