

Award No. 1122
Docket No. CL-1121

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

SUGARLAND RAILWAY COMPANY

ASHERTON & GULF RAILWAY CO.

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement on May 31, 1938 by abolishing clerks' position at Harlingen and assigning the work to the Mechanical Foreman and Car Foremen; also

"Claim for all monetary loss sustained by employees involved in or affected by said violation."

EMPLOYEES' STATEMENT OF FACTS: "Effective with the close of business March 31, 1938 the Carrier abolished the position of Mechanical Clerk at Harlingen, rate \$4.65 per day on a 365 day assignment, and assigned the work to the Mechanical Foreman and the Car Foreman.

"Claim was filed on June 8, 1938, and a joint check was made on September 22, 1938 which proved conclusively that the clerical work was still in existence and that the two Foremen were spending 4 hours 55 minutes performing clerical work that was assigned to and performed by the clerk prior to April 1, 1938."

CARRIER'S STATEMENT OF FACTS: "Effective with the close of business March 31, 1938, Carrier abolished the position of Mechanical Clerk at Harlingen, rate of pay \$4.65 per day, 365 day assignment, the small amount of clerical work which was being performed at that time being assigned to Mechanical and Car Foremen."

POSITION OF EMPLOYES: "This dispute involves the application of the agreement between the Brotherhood and the Carrier regarding the

"Under date of November 12, 1938, case was appealed by Mr. Dyer, General Chairman, to Mr. W. G. Choate, General Manager, who wrote him under date of March 16th, as follows:

"Your file G-257 and conference yesterday concerning clerical work being performed in the Mechanical Department at Harlingen by employes other than those coming under the terms of the Clerks Agreement.

"It is my understanding that the Clerk's position cut off during the dull period last Summer has been reestablished and Clerk is performing this work at present; however, I cannot make any agreement with you to the effect that a clerk will be maintained on this position at any time when business falls off to such an extent that services of clerk are not required.

"The clerical work at this point was originally handled by Foreman as long as it did not amount to very much. When business picked up sufficient to justify employment of a clerk, one was put on. This practice will be continued. It is recognized that in performance of Foreman's work, particularly at small outside points like Harlingen, it will always be necessary for the Foreman to perform a certain amount of clerical work."

"On June 13th, 1939, Mr. Choate agreed to join Mr. Dyer in submitting the question to the National Railroad Adjustment Board but at conference, the procedure by which to submit the case to your Honorable Board could not be agreed upon, therefore, the Representative of the Employes has seen fit to make an ex parte submission.

"It is the contention of the Carrier that due to the business conditions existing at stations in the Valley, especially at Harlingen as in this case, that the clerical position is not required except during the busy season, that the Carrier should not be required to maintain unnecessary force during that season of the year when business is light and the services of a clerk are not required. In view of the conditions surrounding this particular case, your Honorable Board is respectfully petitioned to deny the claim of the employes."

There is in evidence an agreement between the parties bearing effective date of April 1, 1939.

OPINION OF BOARD: It has been repeatedly held by this Board that work embraced within the scope of an agreement may not properly be removed from such agreement and assigned to employes not subject to its terms. In the instant proceeding there is much conflict of evidence as to the extent of the clerical work performed by the mechanical foreman and car foreman upon abolition of the clerk's position on May 31, 1938, but there is ample basis for the conclusion that, entirely apart from such routine clerical work as these foremen handle as a natural incident to their regular duties, a substantial amount of work previously performed by the clerk was transferred to them, and hence removed from the operation of the Agreement, as a result of the abolition of the clerks' position. Under the circumstances of this proceeding, therefore, there was an improper removal of clerical work from the scope of the Agreement, and the employes adversely affected by this removal are entitled to recover all monetary loss sustained.

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 evidence of record discloses a violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.