

Award No. 1125
Docket No. CL-1156

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:

"(a) The carrier is violating the clerks' agreement by refusing to establish a clerical position in the Mechanical Department at Taylor, Texas, and in assigning clerical work to employees not covered by the clerk's Agreement; and

"(b) Claim that a clerical position in said department be established, classified, rated, bulletined, and assigned in accordance with rules of Clerks' Agreement, and that employees be reimbursed for all monetary loss sustained as a result of actions of the carrier."

EMPLOYEES' STATEMENT OF FACTS: "On May 31, 1932, the carrier abolished clerical position in the Mechanical Department at Taylor, Texas, and assigned the clerical work to Mechanical employees who hold no rights under the Clerks' Agreement. Claim was filed on June 4, 1932, and June 30, 1932, the clerical position was restored. The position was again abolished on September 20, 1932, and since that time all clerical work has been performed by the Mechanical Department Foremen, as shown in Exhibits A, B, and C.

"During the month of January, 1939, the Mechanical Foremen spent 366 hours performing work covered by the Clerks' Agreement."

CARRIER'S STATEMENT OF FACTS: "The Carrier maintains a very small Mechanical and Car Department at Taylor and there is only a small amount of clerical work which is performed in those departments at that

"It is the contention of the Carrier that there is not sufficient clerical work at Taylor being performed by the Mechanical and Car Department foremen to justify the establishment of a clerical position and that the Agreement with the Brotherhood of Railway Clerks is not being violated and your Honorable Board is respectfully petitioned to deny the claim of the employes in this case."

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 foremen upon abolition of the clerk's position on August 19, 1932 or September 20, 1932, in connection with which complaint was filed, as well as to the amount of clerical work performed by the foremen after the complaint was renewed on February 21, 1939; 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 clerk's 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. The recovery of reparation, however, cannot extend back beyond February 21, 1939, the date the present complaint was made, since all prior violations had been rendered moot through the closing of the office; and the request, furthermore, that the establishment of a clerical position be ordered must be denied, since the evidence as to the amount of clerical work involved is conflicting, and it is not the function of this Board to determine the character of the arrangement whereby the violation of the Agreement shall be removed. In other words, while the carrier is directed to make reparation for its past violation, as of February 21, 1939, it is free to adopt any arrangement, within the rules of the Agreement, which will remove that violation.

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 to extent and on basis set forth in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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