

Award No. 1256
Docket No. CL-1169

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that position classified as station helper, seniority Class 2, Comanche, Texas, rate \$2.52 per day, is in fact a clerical position and shall be so classified and rated at not less than \$4.77 per day.

"Claim for the difference between the clerical rate of \$4.77 per day and the helper's rate of \$2.52 per day for the period from February 14, 1938 forward."

EMPLOYEES' STATEMENT OF FACTS: "Prior to February 14, 1938 the force at Comanche consisted of:

Position	Hours	Rate
Agent-Telegrapher	8 A.M. to 4 P.M.	92¢ per hour
Telegrapher	8 A.M. to 4 P.M.	70¢ " "
Station Helper	9 P.M. to 6 A.M. (1 hr. meal period)	\$2.52 per day

"Effective that date, assignments were changed as follows:

Agent-Telegrapher	8 A.M. to 4 P.M.	92¢ per hour
Telegrapher	9 P.M. to 5 A.M.	70¢ " "
Station Helper	7 A.M. to 4 P.M. (1 hr. meal period)	\$2.52 per day

"Concurrently with the change in hours of assignment, the work assignment of the station helper was changed to the extent he is and has been required to devote substantially all of his time to the performance of clerical and related work. Attached hereto and identified as Employees Exhibits 'A' to 'H' are statements prepared by the helper outlining the time devoted to the performance of each duty assigned. In addition to the exhibits submitted in support of their claim, the Organization has signed statements from the following employes alleging a preponderance of their time while occupying the position in dispute was devoted to the performance of clerical and related work:

Name	Time	Average Clerical Work
V. E. Boyd	Feb. 14 to Mar. 1	5 hours
C. W. Cash	Mar. 2 to July 13	7 hours 30 minutes
R. L. McKenzie	July 25 to Sept. 8	6 hours
C. C. Hardwick	Sept. 15 to Oct. 13	8 hours"

"The Carrier is at a loss as to the Employes' source of any such information. For many years prior to the first agreement with clerical employes, station helpers were employed on this railroad, particularly at the smaller stations, for the purpose of meeting trains, trucking freight, and assisting in any and all station work to the full extent of their capabilities. All such helpers performed clerical work, the amount of same depending upon conditions at the individual stations. It is assumed similar conditions obtained on practically all other railroads.

"With a regular station force at Comanche consisting of an agent, a telegrapher-clerk and a helper, there is no necessity or justification for this helper performing as much as four hours clerical work per day. As stated in the Carrier's Statement of Facts, when this Carrier acquired the former F. W. & R. G. properties on March 1, 1937, the station force at Comanche consisted of only an agent-telegrapher, a station helper, and a part-time train meeter. The F. W. & R. G. had operated the station with that force throughout the entire period August 15, 1931, to March 1, 1937. Prior to August 15, 1931, the force consisted of an agent, a telegrapher-cashier and a part-time train meeter.

"There can be no reason to sustain the claim; the agreement explicitly requires its denial."

OPINION OF BOARD: Both parties to this dispute admit that Article 2 governs this claim. That article reads:

"ARTICLE II—DEFINITION OF CLERICAL WORKERS, ETC.

"Section 1-a. Clerical Workers. Employes who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work.

"Section 1-b. Machine Operators. Employes who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring special skill and training such as typewriters, calculating machines, bookkeeping machines, dictaphones and other similar equipment.

"Section 1-c. The foregoing definitions, Sections 1-a and 1-b, shall not be construed to apply to:

"(1) Employes engaged in assorting waybills, tickets, car movement slips, etc., nor to employes operating office or station appliances or devices not requiring special skill or training such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering claims or other papers, adjusting dictaphone cylinders and work of like nature; nor to employes gathering mail or other similar work not requiring clerical ability.

"(2) Office boys, messengers and chore boys; or to other employes doing similar work.

"(3) Students and apprentices qualifying for specific clerical work or as machine operators."

This claim does not involve an interpretation of this rule, but a determination of the disputed facts in the record. After a careful review of the record the Board is of the opinion that the evidence justified the conclusion that the employe did "regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records etc."

This conclusion was reached by reading the entire record and the Board will not try and give every reason why it reached such conclusion, but only state a few of them. In the first place carrier admits that 2' 35" was clerical

work and 55" was non-clerical work; leaving 4' 30" to cleaning station, washing windows, etc. and idle time. From the record as a whole it seems that only 30" per day was used to cleaning station and washing windows; thus, there was 4' 00" of idle time. Without considering the idle time as an incident to doing clerical work, the Board thinks that Employes' Exhibits A. B. C. D. E. F. G., and H. more nearly state the exact duties to be performed. These exhibits show only a small period each day as idle time. Moreover, there is evidence in the record that the petitioner made several efforts to get the carrier to agree upon a joint check to determine the dispute, but carrier refused leaving the inference that the petitioner's position was correct; also, when the position of Station Helper was abolished on November 27, 1939, a new position of Telegrapher was created to substantially the same hours theretofore worked by the Station Helper.

The claim is therefore sustained for the period beginning February 14, 1938 to the date the position of Station Helper was abolished November 27, 1939.

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 under the provisions of Article 2, the position here involved was that of a clerk, and the claim for the rate of \$4.77 per day, less the Station Helper's rate of \$2.52 per day is sustained, February 14, 1938 to date position was discontinued.

AWARD

Claim sustained from February 14, 1938 to date position was discontinued.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 11th day of December, 1940.