

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
SYSTEM

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that carrier violated and continues to violate the rules of the Clerks' Agreement when, on July 1, 1932, it abolished Position No. 2355, Car Clerk, Oklahoma City, rate \$5.01 per day, in the manner and to the extent hereinafter set out; and

"Claim that K. W. Klausmeier and all other employes who have worked position No. 2360, Car Clerk, Oklahoma City, shall be paid the difference between the daily basic rates of \$5.01 per day and \$4.79 per day for the period from July 1, 1932 to August 1, 1937 and the difference between \$5.41 and \$5.19 per day for the period from August 1, 1937 forward."

EMPLOYES' STATEMENT OF FACTS: "Prior to July 1, 1932 there existed, among others, the following positions in the Local Freight Office at Oklahoma City:

POSITION NO.	TITLE	HOURS	RATE
	1st Car Clerk	7a- 3p	5.49 (1)
	2nd " "	3p-11p	5.38 (2)
2355	3rd " "	11p- 7a	5.01 (3)
	1st " "	7a- 3p	4.79 (4)
	2nd " "	3p-11p	4.57 (5)
2360	3rd " "	11p- 7a	4.79 (6)

"Effective July 1, 1932 position No. 2355 (then occupied by P. C. Martin) was abolished and the hours of the second trick car clerk (identified above as (2)) were changed from 3:00 P. M. to 11:00 P. M. to 4:00 P. M. to 12:00 midnight. Occupant of Position No. 2360, K. W. Klausmeier, was the only Clerk on duty, between the hours of 12:00 midnight and 7:00 A. M. and was required to perform the combined duties of former position 2355 as well as his own with the exception of the one hour's work taken over by the second trick car clerk after his hours were changed and approximately one hour's work preparing prepay forwarded abstracts which was assigned to other positions in the office not involved in this dispute."

POSITION OF EMPLOYES: "There is in evidence an agreement between the parties bearing effective date December 1, 1929 in which the following rules appear:

Fe Railway System, including Gulf, Colorado and Santa Fe Railway Company, Panhandle and Santa Fe Railway Company and the Association of Clerical Employees—The A. T. & S. F. Railway System, copy of which is attached as Carrier's Exhibit 'A,' there was established in compliance with the provisions of the Railway Labor Act, as amended approved June 21, 1934, an adjustment Board identified as 'Santa Fe Clerical and Related Forces Adjustment Board.' The functions of each of these boards of adjustment were identical to those now reposed in this the Third Division of the National Railroad Adjustment Board, viz., to consider and render decision in disputes growing out of grievances or out of the interpretation or application of the Schedule governing rates of pay, rules and working conditions. Following the discontinuance of Position 2355 on June 30, 1932, the then recognized representatives of the clerical employees were fully cognizant of the circumstances surrounding its abolishment. The handling was in complete accord with the agreed understanding of the Schedule requirements. Had there existed any doubt in the minds of the employees and/or their representatives regarding the handling at Oklahoma City, there was then available all the avenues of appeal that are now available to them for the handling of disputes. The complete absence during the period prior to November 22, 1935 of any complaint from the Organization then representing the clerical employees and who had originally negotiated the rules on which the plaintiff now seeks to sustain its claim is unquestionable evidence in itself that there was no violation of any of the Schedule rules as they were understood by the parties negotiating them. Further, the Board will not fail to observe that the Brotherhood of Railway Clerks delayed practically one and one-half years following their certification as representatives of the Santa Fe clerical employees on November 22, 1935, before they filed any claim in the matter. The Carrier, therefore, submits that regardless of what interpretation the Brotherhood may seek to place upon the respective rules, they are not and cannot be considered qualified to interpret rules in a manner utterly inconsistent with the demonstrated intent of the parties who negotiated the Agreement, viz., the Carrier and the Association of Clerical Employees—The A. T. & S. F. Railway System; and since this latter Organization is no longer in existence on this property, the Carrier must be considered as being in a better position to know what interpretations and understandings were existent between the parties, at least until such time as other understandings and interpretations are reached between the Carrier and the Brotherhood of Railway and Steamship Clerks.

"The Carrier reiterates its position that this case is not one which is properly before the Board since it was not a pending and unadjusted dispute on June 21, 1934, but if the Board sees fit to assume jurisdiction and a hearing is held the Carrier requests an opportunity for oral hearing."

OPINION OF BOARD: Prior to July 1, 1932, there existed, among others, the following positions in the Local Freight Office at Oklahoma City: Position Number 2355, rate of pay being \$5.01 and Position Number 2360, rate of pay being \$4.79. Hours of both positions were from 11:00 P. M. to 7:00 A. M. On July 1, 1932 Position Number 2355 was abolished and duties were assigned to other employees, some of which were assigned to Position Number 2360. The employees contend that a sufficient volume of the duties of the abolished position was transferred to the occupant of Position Number 2360 to in fact make the latter position, in reality, Position Number 2355 while the carrier contends only one hour and five minutes' work was transferred to Position Number 2360.

Based upon the entire record, the Board is of the opinion that the evidence sustains the employees' contention, at least when the claim was filed. This conclusion, supported by employees' Exhibit SR-1 and Exhibit SR-2, has not been successfully contradicted. Exhibit SR-2 shows that the occupant of Position Number 2360 is performing four hours and seventeen minutes per day of the duties which were assigned to Position Number 2355 prior to July 1, 1932.

In Award No. 751 this Board held:

"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."

The foregoing principle laid down in Award No. 751 is hereby reaffirmed. Similar rules are involved in the instant case and the Board finds that the carrier violated them either on or subsequent to July 1, 1932.

The Board however is not sufficiently satisfied with the record in this case to order reparation for the entire period subsequent to July 1, 1932, but does hold that the current agreement was violated sometime prior to the filing of the instant claim, March 27, 1937. Reparation is therefore allowed retroactive to that date.

Carrier challenges the jurisdiction of the Board on the basis that the claim was not seasonably filed; that no dispute was pending and unadjusted on June 21, 1934, the effective date of the amended Railway Labor Act, which established the National Railroad Adjustment Board and defined its jurisdiction.

With this contention the Board does not agree. This has been a continuous violation and numerous awards hold that this Board has jurisdiction where the violations are continuous. See Awards 444 and 1249 and awards cited therein.

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 carrier violated the current agreement and reparation is allowed from March 27, 1937.

AWARD

Claim is sustained from March 27, 1937 forward.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1940.