

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood that the Carrier violated and continues to violate the terms and provisions of Clerks' Agreement by assigning work coming within the scope thereof to excepted employees not covered by Clerks' Agreement."

JOINT STATEMENT OF FACTS: "Prior to November 1st, 1938, claim clerks received all new claims received in the U. S. Mail and otherwise, except those filed on carload fruit and vegetables. They checked these claims to see if correct and sufficient documents were attached and secured same if necessary. Their duties were to attach to claims all necessary information to support loss and damage.

"Disposition of salvage at Milwaukee is made by Head Clerk of O. S. D. Dept., and report of same sent to W. C. Johnson, Freight Claim Agent using an 'S' file number as index for record purposes. Claims involving salvage would only require the 'S' file number for W. C. Johnson to locate the record. This file number would be shown in claim by claim clerks.

"Since November 1st, 1938, all claims filed for loss and damage at Milwaukee go to an assistant freight claim agent, a supervisory employe not covered by clerks' agreement. He checks them over to see if necessary documents from claimant are attached. Some are sent to W. C. Johnson without further work and others are sent to the chief clerk, an excepted position employe. The chief clerk examines all claims given him by the Assistant freight claim agent to see what, if any, further information is necessary to support claims for adjustment by the freight claim agent. Such further information as is desired by the chief clerk is written on memorandum slips attached to claims, and given to claim clerks and other employes to look up, and to be returned to the chief clerk.

"During year of 1938, new claims for loss and damage were filed at Milwaukee as follows: (Also for overcharges)

January	284	April	212	July	257	October	273
February	180	May	195	August	206	November	289
March	269	June	230	September	287	December	124

During year 1939 new claims for loss, damage and overcharge were filed at Milwaukee as follows:

January	357	April	274	July	357
February	253	May	360	August	183
March	297	June	373	September	334

these two employees who are not covered by Clerks' Agreement was performed by Claim Clerks. Your honorable board has held in a long line of Awards that work once covered by agreement cannot be removed therefrom except by agreement. We direct attention to Awards 631, 637, 736, 741 and 752.

"We reiterate that the Carrier violated the terms and provisions of Clerks' Agreement by assigning work coming within the scope thereof to employees not covered thereby and ask your honorable board to so rule."

POSITION OF CARRIER: "As outlined in the joint statement of facts, prior to November 1, 1938, all new claims filed at Milwaukee freight station, with the exception of those on shipments of carload fruit and vegetables, were given directly to claim clerks. Under this plan the claim clerks were in some instances developing and forwarding to the General Claim Agent at Chicago unnecessary records and information which was already in his possession.

"The majority of new claims filed at Milwaukee freight station contained sufficient information and documents to permit the General Claim Agent's office at Chicago to pass on them for payment without any additional records being furnished by local force. In order to expedite the handling of claims and eliminate the loss of time and duplication of work as a result of claim clerks at Milwaukee freight station furnishing unnecessary information, arrangements were made to have all loss and damage claims presented at that point passed directly to an Asst. Freight Claim Agent located at Milwaukee to determine what, if any, further investigation was necessary.

"Such claims as are not forwarded direct to the Freight Claim Agent at Chicago by the Asst. Freight Claim Agent are turned over to the Chief Clerk at Milwaukee freight station for further information and after he determines what facts should be secured, the files are given to claim clerks for handling.

"The service in connection with examination of new claims received in the freight office at Milwaukee by the Asst. Freight Claim Agent and the chief clerk, and which does not average more than 15 minutes per day, is of a supervisory nature and work properly assignable to incumbents of such positions. The performance of this small amount of supervisory service by the Asst. Freight Claim Agent and chief clerk is in the interest of efficient handling of claim matters and does not require the incumbents of these positions to perform any service not properly assignable to the supervisory position, and furthermore there has not been any reduction in the number of clerical employees assigned to claim work at Milwaukee as a result of the plan placed in effect on or about November 1, 1938.

"It is the railway company's position that on basis of the facts in this case there is no justification for complaint on the part of the employees for the reason that service in connection with examination of new claims filed at Milwaukee freight station by the Asst. Freight Claim Agent and chief clerk is not work of a class coming within the scope of Clerks' Agreement."

OPINION OF BOARD: While the record contains a "Joint Statement of Facts" it is quite brief and does not fully set forth all the facts, as is illustrated by the conflicting ex parte statements of the respective parties as to many other facts and circumstances of the dispute.

Under these circumstances the Board is not in a position to decide the dispute; therefore, the case should be remanded for the parties to jointly develop the facts and undertake to dispose of the dispute on the property. Failing of disposition, the case may be resubmitted on an adequate record.

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 is inadequate and the case will be remanded in accordance with the Opinion.

AWARD

The case is remanded in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of March, 1941.