

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that carrier violated the rules of the Clerks' Agreement when on August 3, 4, 5, and 6, 1937, it required three apprentice machinists to perform routine clerical work at Clovis, New Mexico, aggregating 114 hours; and

"Claim that R. C. McReynolds, John Byrne, C. R. Hewett, O. D. Kelly and Lem A. Wright shall each be paid 22 4/5 hours pay at punitive rates, based on the rate for position to which assigned on the four days covered by this claim, account being deprived of work to which they held seniority rights."

EMPLOYEES' STATEMENT OF FACTS: "During the month of July, 1937, the Master Mechanic's office at Clovis, New Mexico, was called upon to furnish a special statement and certain information relative to the handling of power during the months of April, May, June and July, 1937. The preponderance of the work required for compiling the statement and assembling the information requested consisted of copying engineers' work reports, Form 1225. This work was first assigned to the regular force of clerks and callers who were required to work on same during their spare time. The volume of ordinary and routine work assigned to the regular force was such that they had but little time available to devote to this addition to their regular assignment.

"Consequently, effective July 30th, the regular force consisting of the employees in whose behalf this claim is filed was authorized to and did work overtime on July 30th and 31st, and August 1 and 2. For reasons unknown to the employees, the authority to perform this special assignment on overtime with the regular force was withdrawn.

"Beginning August 3rd, the work was taken over by three apprentice machinists who were brought into the office from the Shops. The machinists performed the work during their regular hours of assignment and were paid under the wage schedule provided in the carrier's agreement with the Shop Crafts Organization."

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

Article I, Section 1
Article II, Sections 1-a and b

and reasonable application, very recently disrupted by peculiar claims advanced by Petitioner. This Agreement never was intended to prevent practical and reasonable management of the railroad. Employees are still, by law, employees, 'in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service).' (Railway Labor Act, Sec. 1, Fifth.) Management still has responsibility to the owners and the public for efficient operation. Its reasonable actions are to be upheld unless clearly condemned by agreed rule:

'At least the resolution of the carrier to that end is not so unreasonable as to warrant us in concluding otherwise.' (From Award 1134.)

'The scope rule of the Agreement, upon an alleged violation of which this claim is based, specifies the classes of employees subject to the Agreement; it does not specify the work which may properly be assigned to, or the duties which may properly be required of, these classes of employees. In point of fact, the employees here involved perform a great variety of services for the inclusion of which no express authority either exists or is required to exist. These services have developed in response to the exigencies of particular situations, and no reason appears why the duties prevailing at any given time should be deemed to be definitive. Reasonable flexibility in the administration of the railroad industry, except in so far as it is inhibited by law or restricted, expressly or by necessary implication, through agreement of the parties, is essential to the welfare of the employees as well as to that of the carriers. Unless thus limited, the managerial discretion of the carriers must be held to be controlling.' (From Award 1078.)"

OPINION OF BOARD: In its original submission in this case, the petitioner stated that the carrier paid the three apprentice machinists who performed the work in question, under the provisions of the agreement with the Shop Crafts' Organization. It was later developed however, that at some subsequent date, August or September, 1940, the carrier made an adjustment in favor of these employees whereby they were paid the established rate of pay for clerks while performing this work.

The parties agree that there were no extra or unassigned clerks available in the seniority district during the period of this claim.

Based upon all the facts and circumstances of this particular case, the action of the carrier will not be disturbed.

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 employees involved in this dispute are respectively carrier and employees 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 for reasons stated the action of the carrier will not be disturbed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1941.