

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul W. Richards, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY
(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad that the Carrier violated the Clerks' Agreement,

(1) When on March 6, 1937, without conference, negotiation and agreement between the parties, it removed the work of making a daily check of the mines at Paris, Arkansas, out from under the scope and operation of the Clerks' Agreement and assigned said duty and work to switch engine foreman (conductor) who holds no seniority rights under the Clerks' Agreement.

(2) That the senior furloughed clerk listed on the Clerks' Class 1, Station and Yards Seniority Roster, Southern Kansas-Central Division, qualified to perform the work of checking the mines at Paris, and others affected, be compensated for wage loss sustained retroactive to August 29, 1939, on which date this complaint and claim was formally presented to the Division Superintendent."

EMPLOYEES' STATEMENT OF FACTS: "On November 1, 1928 Clerks' Mediation Wage Agreement listed, classified and rated at Paris, Arkansas, subject to the scope and operation of the Clerks' Agreement, the following:

Cashier	Rate \$5.39 per day
Clerk	Rate \$4.24 per day
Porter	Rate \$2.00 per day

"For some indefinite period, the Carrier assigned the duty and work of checking the coal mines at Paris, Arkansas, to Engine Crew foremen (Conductors), i. e., recording the car numbers and initials of all empty cars placed at each mine, showing the name of the mine, and also recording the car numbers and initials of all car loads pulled from each mine daily, recording the name of the mine in a book furnished the conductor by the Carrier. The station agent at Paris makes up the yard check report (6793) from this book record, thus maintaining from said record an account of just what cars are in process of loading, loads and empties at each mine, which is referred to as 'car records.'

"Effective September 21, 1936, the Carrier, per its advertisement bulletin No. 29, dated September 8, 1936, copy attached and designated as Exhibit 'A,' established a position of yard clerk at Paris, rated \$4.39 per day, which

recording in a book form the numbers of the cars he sets and picks up at these mine tracks. They state that the senior furloughed clerk, as well as others affected, be compensated for alleged wage loss. So far as the Carrier has knowledge there is no furloughed clerk, neither is there any one suffering a wage loss. The Carrier protests any such mythical claim of this character being favorably considered by your Honorable Board. We have never received a claim from any individual employee.

"For a General Chairman, representative of the Employees, to ask the Board to sustain a claim filed by him on behalf of unknown claimants, is, in our opinion, far beyond any right vested in him under provisions of the Railway Labor Act Amended, and certainly not vested in him under the wage agreement between the Carrier and the Employees' representatives—Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees dated August 1, 1926. There is no rule in this agreement that would give to a representative, including the General Chairman, right to file monetary claims for alleged violation of rules in the agreement in favor of unknown individuals and cover his claim by the mere phrase—

'We claim that the senior furloughed clerk and others affected be compensated for wage loss retroactive to August 29, 1939.'"

OPINION OF BOARD: Within the Paris yard limits is trackage that serves several different coal mines. Each year, during the coal producing season, beginning in late summer or fall and extending into the following spring, the carrier operates in this yard a switch engine. With this switch engine empty cars are supplied the mines and cars, when loaded, are pulled. A position of yard clerk at the Paris yard was bulletined on September 8, 1936, and same was awarded on September 21, 1936, to Clerk Max Doty. To this position was assigned the checking of the mine tracks. The making of the daily car report for the yard, Report 6793, was also a part of the work of the position. The position was abolished on March 6, 1937.

During the coal producing season each year since the abolishment, the foreman or conductor of the switch engine crew has each day kept in a book a record of the empty cars furnished each mine and of the loaded cars pulled at each mine, the initials and number of every such car being set down in the book. At the end of the day the book is turned in to the Paris agent for compilation through the use thereof of various accounting reports including daily Report 6793 of cars in Paris yard. The position bulletined September 8, 1936, did the checking of the mine tracks and made Report 6793 until the position was abolished, and during that period the foreman or conductor of the switch engine crew kept no book or other record of the cars placed or pulled at the mines. Petitioner urges that the position was abolished without conference or agreement, and that the work remaining was turned over to employees not entitled thereto because they were outside the Clerks' Agreement, in violation of the agreement. It is undisputed that there was no such conference or agreement. The dispute is as to some of the other features of petitioner's contention.

That checking the tracks in this yard was in its nature work that came under the Clerks' Agreement the docket makes evident. It is also apparent that, since the abolishment of the position the work of checking the mines during the coal producing season has remained. This work has been done at least partially through the foreman or conductor making the daily book records of the cars placed on and pulled from the mines' trackage. The agent, making a Sunday check of the mine trackage, is enabled to make daily car on hand reports by accepting in lieu of actual daily checking of the mine tracks the foreman's daily report.

It is the opinion of the Board that, when without conference or agreement the position was abolished, there was clerks' work remaining, and that it was turned over to others outside the agreement, in violation thereof. The carrier relies on the fact that the crew assigned to the switch engine

was not a yard crew, but a road crew, paid as such, and, says carrier, the foreman or conductor was doing the recognized work of a road-crew conductor in keeping the book record. We think, however, that the kind of a crew it may have been is not at all decisive of the clerks' rights. The controlling consideration appears to be that this crew was working in a yard where the checking of yard and tracks was clerks' work, and, though it might have been a road crew, it was not operating a train out on the road, where clerks ordinarily do not function and where the conductor does properly keep records. The facts and circumstances in this docket sustain the petitioner's contention, in the Board's opinion.

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 there was a violation of the rules cited by petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of July, 1941.

Dissent to Award 1523, Docket CL-1256

The fault in this award lies in its declaration that the controlling consideration was that checking of cars in this Paris yard was Clerks' work, and in its apparent presumption that any report, as in this case only was made, on cars picked up, moved or placed by conductors of traveling switch engines handling same was a part of such checking of cars in Paris yard. The confusion of such reports, customarily made by train and yard service employes, with reports incident to checking of cars on tracks, customarily made by Agents and Clerks, with, however, no reservation of exclusive rights to either, has here led to a confused award of unsound decision and impractical implication.

/s/ C. P. DUGAN
/s/ R. F. RAY
/s/ R. H. ALLISON
/s/ C. C. COOK
/s/ A. H. JONES