

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

E. L. McHaney, Referee

PARTIES TO DISPUTE:

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

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY—
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF
TEXAS**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that—

(1) The carrier has violated and continues to violate its agreement with the Organization when it removed routine clerical work from the scope and operation of working and wage agreements at Wichita Falls, Texas yard office and refused and continues to refuse to classify, rate, bulletin and assign said clerical work in accordance with existing agreement rules; and

(2) That the carrier shall be required by appropriate award and order to restore said clerical work to the scope and operation of the rules of the existing working and wage agreement; and

(3) That employees adversely affected by carrier's actions shall be reimbursed for all monetary losses sustained retroactive to August 25, 1938."

EMPLOYEES' STATEMENT OF FACTS: "At Wichita Falls, Texas, this carrier maintains a terminal yard and interchange connections with other Carriers, where regular and ordinary terminal yard and interchange switching operations, including necessary checking, record and report clerical work, is maintained twenty-four hours daily.

"For the rendition of clerical work attached to said yard operations the Carrier has maintained a staff of clerks to whom ordinary and regular clerical work was assigned in accordance with the agreements negotiated and accepted by mutual consent by and between the parties to this dispute.

"The number of clerical positions and clerical employees have varied from time to time, but until as hereinafter indicated all such work was classified, rated, bulletined and assigned in accordance with working agreement rules and at rates specifically adopted by agreement by the two parties.

"For the purpose of this particular dispute we hereby stipulate and affirm that prior to September 28, 1930, the following listed duties were assigned to and performed by the incumbents of positions of 'Night Interchange Clerk' and 'Chief Yard Clerk,' both of which positions were subject to all the terms and rules of the Clerks' Agreement:

1. Assorting and checking waybills received from conductors of inbound trains;

as is shown by the analysis of the joint check there are no eight-hour shifts within a spread of nine hours in which there is as much as four hours work performed by the four positions involved at all the locations at which the work is performed; besides which, some of the work is simultaneously performed by two positions, amounting to from fifteen to fifty minutes per day; and some of this work is simultaneously performed at more than one location.

"The assignments of the chief dispatcher, dispatcher, yardmaster and assistant yardmaster run from 6:00 A. M. to 1:00 A. M.—a spread of nineteen hours. Starting at 6:00 A. M. on each of the week days and showing the clock time of last performance of work we have:

Date	From	To	Spread	Amount Clerical Work
3-25-39	6:00 A. M.	9:05 P. M.	15'05"	5'10"
3-27-39	6:00 A. M.	10:05 P. M.	16'05"	4'40"
3-28-39	6:00 A. M.	10:05 P. M.	16'05"	4'50"
3-29-39	6:00 A. M.	10:00 P. M.	16'00"	4'45"
3-30-39	6:00 A. M.	10:00 P. M.	16'00"	5'45"
3-31-39	6:00 A. M.	10:10 P. M.	16'10"	4'55"

"Here we have a clearer exposition of what the petitioner would call a 'day,' that is, instead of the agreement rule for eight hours in a spread of nine, we shall call a 'day' in this case from 15'05" to 16'10".

"The petitioner's apparent interpretation of what constitutes a 'day' is merely convenient for the purpose of this claim. The carrier submits that a 'day,' as contemplated by the agreement is not a period of twenty-four hours; nor a calendar day. A 'day' is clearly defined in Rule 43, and may not be disregarded for convenience and attempted support of a claim in a particular situation.

"If the statement of claim is directed toward prohibiting the carrier from making a bona fide reassignment of clerical work when the time element limitation of the scope rule no longer exists, attention is directed to the fact that the contentions of the General Chairman as shown in Exhibit B is clearly based on the idea that the four hour limitation properly applies.

"In Exhibit B the contention is that there are more than four hours of clerical work performed each day, in this particular situation. The unsoundness of this contention is immediately apparent when the definition of a day, as clearly expressed in the agreement, is considered. Such an interpretation of a 'day' as the petitioner here applies, would not be considered for a moment if proposed in connection with the general rules of the agreement; it is invalid here.

"The Carrier respectfully requests that for the foregoing reasons the claim of the petitioner be denied."

OPINION OF BOARD: Prior to September 1930, there were employed in the terminal yard and agency at Wichita Falls, Texas, terminal, a chief yard clerk, with hours of service from 8:30 A. M. to 4:30 P. M., and a night interchange clerk, with hours from 3:00 P. M. to midnight, and that while the latter was shown as being on the staff of the agent's office, he and the day chief clerk in the yard office performed all of the clerical work there was to be performed in the latter office which included the clerical work here in dispute. Since about September 1930, a temporary and seasonal position of night interchange clerk has existed for short periods of time at said station and yard terminal. During which times the two clerical positions named performed all the clerical work here in dispute.

A dispute arose between the parties in August 1938, as to the right of the Carrier to discontinue the position of night interchange clerk and assign

the work thereof to employes not within the scope of the Agreement, and as a result, a joint check was made for the period March 25, to March, 31, 1939 inclusive, to determine by whom the work in question was performed. Each day's check is shown on separate sheets and each is headed, "Statement showing yard clerical work performed in Wichita Falls, Texas, terminal by combination chief-trick dispatcher, second trick dispatcher, day yardmaster and assistant yardmaster . . ."

It appears from the joint check referred to that the chief-trick dispatcher and the second trick dispatcher perform clerical work each week day varying in volume from 1 hour and 50 minutes to 2 hours and 40 minutes; and that day yardmaster and assistant yardmaster regularly perform clerical work varying in volume from 2 hours and 25 minutes to 3 hours and 5 minutes each week day, all of which amounts to more than 4 hours per week day. We do not understand that this joint check covers clerical work merely incident to the positions of dispatchers or yardmasters as the heading of each page of each day's check refers to "Yard clerical work."

The Carrier seems to contend that if clerical work diminishes to less than 4 hours per day, or to a point where there is less than that amount performed within a spread of 9 hours, it can parcel such work out to employes not under the Clerks' Agreement. We do not agree as to purely clerical work. See Awards 458, 751, and 754. It does not appear to be disputed that all this "Yard clerical work," which varies from 4 hours and 40 minutes to 5 hours and 45 minutes each week day was, prior to the discontinuance of the position of night interchange clerk in September 1930, performed by that position and the chief yard clerk, and since there is more than four hours per day of clerical work still to be performed, we do not understand why that arrangement should not have continued.

It is also argued by the Carrier that, because it has, since 1930, placed this work under the Agreement and removed it at will, it is justified in continuing to do so. It is well settled that continued violations of collective agreements do not revise or change them. It was held in Award 751 that work once placed under the agreement cannot arbitrarily be removed therefrom except as provided therein.

Also, Addendum No. 5 to the current rules Agreement bearing effective date of August 1, 1937, shows Position No. 5840, night interchange clerk, at Wichita Falls Freight, rate \$5.55 per day. In that Addendum the Carrier recognized the position here in question, the classification, rate and location thereof, and that it would not abolish the position except as provided in Rule 78.

Carrier has cited a number of Awards, including No. 809. We think Award 809 supports the position of claimant, and that the others are not in point.

We hold that the Carrier has violated the current Agreement as contended.

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 Carrier violated the current Agreement as contended.

AWARD

Claim (1, 2, and 3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of August, 1941.