

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Richard F. Mitchell, Referee

**PARTIES TO DISPUTE:**

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

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

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

"The Carrier has violated and is continuing to violate the Clerks' Agreement by assigning clerical work in the Trainmaster's office at Fort Smith, Arkansas, to employes not covered by said agreement, and further failing and refusing to assign such work to employes holding seniority rights thereto under the Clerks' Agreement; that such clerical work shall be restored to the scope of the Clerks' Agreement and assigned to employes in accordance with the rules thereof; also claim that all employes involved in or affected by said violation of rules be compensated in full for any monetary loss resulting from the Carrier's action."

**EMPLOYEES' STATEMENT OF FACTS:** "As of March 25, 1940, position of stenographer-clerk existed in the office of Trainmaster at Fort Smith, Arkansas and was covered by the Clerks' Agreement. At the close of business March 25, 1940, this stenographer-clerk position was discontinued and the work turned over to other employes not covered by the Clerks' Agreement. The position of stenographer-clerk, rate \$5.30 per day, assigned hours 8:00 A. M. to 5:00 P. M. Claim was filed with the Carrier April 4, 1940, due to the discontinuance of this position. Under date of September 10, 1940, joint check of the clerical work performed in the office of Trainmaster was made by the Superintendent of that Division and the General Chairman with the following results showing the time required and the distribution of the work after the position discontinued:

**Performed by the Trainmaster**

Handling and checking daily car reports, or yard checks—	15"
Handling home routes on freight cars—	1'00"
Correspondence—car delays.	15"
Filing—	10"
No bill coal report—	05"
Misc. reports to Supt. Transportation—	30"
Personal Injury and Accident reports—	10"
Company material report—	05"
Various miscellaneous reports—	40"
<b>TOTAL</b>	<b>3'10"</b>

Handling yard checks.....	15 min.
Home routes .....	1 hr. 00 "
Correspondence, car delays.....	15 "
Various miscellaneous reports.....	40 "
No-bill coal report.....	05 "
Miscellaneous reports to Superintendent	
Transportation, J. H. Doggrell.....	30 "
Personal Injury, Accidents, etc.....	10 "
Company material report.....	05 "
Terminal delay .....	10 "
<b>Total .....</b>	<b>3 hrs. 10 min.</b>

I want to say this is not a haphazard statement. This particular feature was considered by and confirmed by our General Manager, Assistant to General Manager and two Superintendents, all of whom are former train dispatchers and chief dispatchers (Trainmasters). The time study shows train dispatchers spend 40 minutes per day figuring gross tons for 691 reports. The practice which has been followed for years is for the second shift dispatcher to figure the gross ton miles of each train operated, writing the information in pencil on the train sheet for use of the third shift dispatcher who fills out the 691 report form. The dispatchers do not make this report complete. They show only the information up to and including the column headed 'potential'. This work they do is practically all information that must be taken from the dispatcher's train sheet.

"The time study shows messenger spends 30 minutes adding and recapping the '22' report. This is a car situation report received by telegraph and the receiving and making of this report is in no sense work belonging to clerks. It should be done by the Trainmaster, dispatcher, telegrapher, or whoever receives the report. The messenger is covered by the Clerks' Agreement. The work listed as setting up and filing yard checks is Group 2 work under the Clerks' Agreement and may properly be done by the messenger who is a Group 2 employe.

"The time study shows 10 minutes typing the 87 report. This is a train performance report made out by the dispatcher. It was not contended making the report was clerical work, but that making copies on the typewriter was. Many employes other than clerks use typewriters. Telegraphers use them constantly in relay offices and make as many copies of telegrams as are required.

"In the handling of this case on the property, Mr. Andereck referred to several awards of the National Railroad Adjustment Board, none of which were analogous to this case of ours. We respectfully refer you to Award No. 809 which in many respects is similar to this case of ours and we feel fully supports our position.

"As a matter of information, copies of the following blank forms referred to in this submission are attached:

'22' Report  
 CT-42 Car Report  
 MW-70 Work Train Report  
 87 Report  
 691 Report

"We request denial of claim in its entirety."

**OPINION OF BOARD:** The claim of the petitioner is that the carrier violated and is continuing to violate the current agreement by assigning the clerical work here involved in the trainmaster's office at Fort Smith, Arkansas to employes not covered by the agreement and by failing and refusing to assign such work to employes holding seniority rights thereto; that such clerical work shall be restored to the scope of the current agreement and

assigned to employees in accordance with the rules thereof. It is also claimed that all employees involved in or affected by the alleged violation of the current agreement be compensated in full for any loss resulting from the carrier's action. The claim does not request the restoration of the position of stenographer-clerk because this position was reestablished on November 21, 1940. The question, therefore, involves the period from March 26, 1940 to November 21, 1940.

This Board has repeatedly held in a long line of its decisions that carriers may not take work from the collective agreements and assign same to employees not covered thereby. Compare Awards 385, 458, 751, 809, 1122, 1125, 1126, 1209, 1300, 1314, 1403, and 1551. The title "trainmaster," used throughout this submission, is the one used on the Frisco Railroad for position performing the duties of chief dispatcher. There is no position taking the title of chief dispatcher and no position in the dispatcher's office having jurisdiction over the train dispatcher other than the trainmaster. In addition to the trainmaster and train dispatcher in the office at Fort Smith, Arkansas, on September 15, 1924, there was a car service agent and a clerk. The car service agent was an official position. It did not come under the scope of the clerks' agreement. This position was assigned the duty of handling distribution of equipment, checking of car reports, handling correspondence in connection therewith and to see that there was minimum delay in loading and unloading of cars, handling home routes and miscellaneous reports.

This position was abolished effective March 1, 1926. Some of the duties assigned this position were eliminated and some taken over by the superintendent of transportation but a considerable portion was taken over by the trainmaster. A clerk-stenographer position was established effective March 1, 1926, to assist the trainmaster due to car service agent position being abolished. The clerk position was abolished effective September 9, 1930. The clerk-stenographer position was abolished effective July 1, 1931. These decreases in the force were due to a decrease in business. From then until November 19, 1939 there was no position of stenographer-clerk to trainmaster but on November 19, 1939 the position of stenographer-clerk was again reestablished. This record shows that the reason for its reestablishment was an abnormal increase in coal business. The position of stenographer-clerk to trainmaster was again abolished on March 26, 1940. The record shows that the coal movement reached a peak of 1,100 cars on the Fort Smith division during January 1940 and that it declined to 159 cars in March 1940, of which only 26 cars were billed the last two weeks of the month and only 9 cars during the first two weeks of April.

It is the claim of the carrier that there was no longer any necessity for clerical assistance in that office and the position was abolished; that with the abolishment of the position, the work returned to the trainmaster, the train dispatcher and a messenger who had performed the work prior to the time that the stenographer-clerk position was established. The messenger comes under the clerks' agreement.

This Division has been confronted with similar cases. In Award 931, this Division, speaking through Referee Frank M. Swacker, said:

*"The evidence shows that some of the foregoing circumstances were present in one or more of each of the instances of the establishment of a position of assistant chief dispatcher. It further indicates that as and when the necessity for the position to be filled no longer existed, the position was abolished and the work theretofore performed by the assistant chief dispatcher returned to whence it came. We are not here concerned with the propriety of the turning over of the clerical work, subject either to the telegraphers' or clerks' agreement, to an assistant chief dispatcher, although it appears quite dubious. The point here made is that the handling of this routine clerical work back to whence it came is in conflict with the principles referred to, i. e., that a position may not be abolished with work*

remaining turned over to persons outside the agreement. With this contention we cannot agree, since except as clerical work may be incidental to positions covered by the dispatchers' agreement, the scope thereof does not include straight routine clerical work. Nor can we agree with the proposition that the turning back to the chief dispatcher of the work taken from him, (he being of an excepted class not subject to the agreement), constitutes a transgression of those principles. As earlier stated there is no specific particular type of work that can be said to be peculiarly work of an assistant chief dispatcher. On the contrary, his work consists of, when his position is necessary at all, the handling of that excess of the chief dispatcher's work which the latter is unable to perform; thus when this excess disappears the work of assistant chief dispatcher disappears. Though some of the same class of work which he did perform may thereafter continue to be performed by the chief dispatcher, it must be remembered that chief dispatcher work is not subject to the agreement except only as an excess thereof may be assigned to a position of assistant chief dispatcher that may be established. Therefore, it is only an excess of such work which ever becomes subject to the dispatchers' agreement, and when the excess vanishes there is no such work covered by the dispatchers' agreement."

See also the recent Award, No. 1314.

With the rules in mind laid down in the above cited awards, we have made an examination of the record in this case and we can come to no other conclusion than that the work here involved is incidental to the work of trainmaster (chief dispatcher) and dispatcher and there was no violation of the agreement in returning it to the original position when the need for assistance no longer existed.

**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 has been no violation of the current agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

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