

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

"(a) The carrier is violating the Clerks' Agreement by refusing to assign work covered by the Clerks' Agreement in the Mechanical Department at Taylor, Texas to employees holding seniority rights in Seniority District Number 22. Also

"(b) Claim for all losses sustained by employees involved in or affected by this agreement violation."

JOINT STATEMENT OF FACTS: "On June 14, 1940 the Third Division of the National Railroad Adjustment Board rendered Award Number 1125, Docket CL 1156, covering the following claim:

'(a) The carrier is violating the Clerks' Agreement by refusing to establish a clerical position in the Mechanical Department at Taylor, Texas, and in assigning clerical work to employees not covered by the Clerks' Agreement; and

'(b) Claim that a clerical position in said department be established, classified, rated, bulletined, and assigned in accordance with rules of Clerks' Agreement, and that employees be reimbursed for all monetary loss sustained as a result of actions of the carrier.'

"Upon receipt of Award Number 1125, the carrier and the Brotherhood Representatives made proper check and investigation and payment was made for the violation up to and including the month of June, 1940.

"On July 19, 1940 we requested the carrier to advise when they were going to comply with the Award and correct the violation by restoring the work to employees covered by our agreement. On July 30, the carrier advised that the Mechanical Department at Taylor had been relieved of all clerical work, however investigation developed that the work was being performed to a large extent, by employees who hold no seniority rights in Seniority District Number 22.

was applied in accordance with the Carrier's understanding of the opinion of the Board upon which the award was based. A joint check was made by a representative of the carrier and a representative of the organization and all employees affected were paid in accordance with the award. The mechanical foremen who had been performing the clerical work at Taylor were relieved of that work; a part of the work being transferred to an employee in the mechanical department at Palestine, and the remainder to a yard clerk at Taylor. Both of the employees are included in the scope of the agreement with the Brotherhood of Railway Clerks.

"The opinion of your Board in connection with Award No. 1125, referred to above, reads as follows:

'It has been repeatedly held by this Board that work embraced within the scope of an agreement may not properly be removed from such agreement and assigned to employees not subject to its terms. In the instant proceeding there is much conflict of evidence as to the extent of the clerical work performed by the foremen upon abolition of the clerk's position on August 19, 1932 or September 20, 1932, in connection with which complaint was filed, as well as to the amount of clerical work performed by the foremen after the complaint was renewed on February 21, 1939; but there is ample basis for the conclusion that, entirely apart from such routine clerical work as these foremen handle as a natural incident to their regular duties, a substantial amount of work previously performed by the clerk was transferred to them, and hence removed from the operation of the Agreement, as a result of the abolition of the clerk's position. Under the circumstances of this proceeding, therefore, there was an improper removal of clerical work from the scope of the Agreement, and the employees adversely affected by this removal are entitled to recover all monetary loss sustained. The recovery of reparation, however, cannot extend back beyond February 21, 1939, the date the present complaint was made, since all prior violations had been rendered moot through the closing of the office; and the request, furthermore, that the establishment of a clerical position be ordered must be denied, since the evidence as to the amount of clerical work involved is conflicting, and it is not the function of this Board to determine the character of the arrangement whereby the violation of the Agreement shall be removed. In other words, while the carrier is directed to make reparation for its past violation, as of February 21, 1939, it is free to adopt any arrangement, within the rules of the Agreement, which will remove that violation.'

"It is the contention of the Carrier that the clerical work formerly performed by the mechanical foremen at Taylor is now being performed by employees coming within the scope of the agreement between the carrier and the organization, under which circumstances, the agreement is not being violated and your Honorable Board is respectfully petitioned to so rule."

OPINION OF BOARD: As the Board views it, the sole question presented in this case is whether the Carrier may assign duties, appertaining to a position which has been abolished, to an employee who belongs to a seniority district other than that in which the position falls under the agreement. The position is in seniority district No. 22. The employee who is performing the remaining duties appertaining to it holds seniority rights in district No. 25.

The Carrier maintains that this proceeding is for the purpose of forcing it to reestablish the abolished position; and argues that the matter was disposed of in Award 1125 which involved a dispute growing out of substantially the same state of facts. In that case, however, the seniority issue was not raised or decided. The claim was made in that case that the position should be restored. To that extent the claim was denied. But it was further decided that the remaining duties appertaining to the abolished posi-

tion could not be assigned to employees who were not within the scope of the agreement. In the Opinion in that case it is said: "In other words, while the carrier is directed to make reparation for its past violation, as of February 21, 1939, it is free to adopt any arrangement, **within the rules of the Agreement**, which will remove that violation." (Emphasis added.) Pursuant to that Award reparation was made from the time specified through June 1940.

The Organization contends that the Carrier has not yet adopted an arrangement "within the rules of the agreement" which removes the violation. The Carrier contends that there is now substantial compliance with the agreement since only 37 minutes a day is required for the performance of the remaining duties attaching to the former position. From the standpoint of time and money involved the violation does seem inconsequential. The principle involved, however, is not. The dispute presents a challenge to the integrity of seniority rights as agreed upon by the parties. To condone a seemingly slight violation would tend to undermine the basic structure of seniority rights. This the Board has consistently refused to do. See Awards 752, 753, 973, 975, 1403, 1440.

The Carrier, having violated the agreement by assigning the remaining duties of the former position to an employee holding seniority rights in district No. 25, is required to make reparation to the employees affected for all monetary loss sustained subsequent to June 30, 1940.

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 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 the evidence of record discloses a violation of the agreement.

AWARD

Claim sustained on basis indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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