

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

**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 Laredo, 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 1126, Docket CL-1158, covering the following claim:

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

'(b) Claim that a clerical position be established, classified, rated, bulletined, and assigned in accordance with the rules of the Clerks' Agreement and that all employees involved in or affected by the carrier's action be reimbursed for all monetary loss sustained.'

"Upon receipt of Award Number 1126, 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, 1940 the carrier advised that the Mechanical Department at Laredo 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 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 Laredo 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 station clerk at Laredo. 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. 1126, 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 at the time of and subsequent to the filing of complaint 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. While complaint was not filed until February 21, 1939, more than eleven years after the abolition of the clerk's position on October 19, 1927, the performance of clerical work by the foremen constituted a continuing violation, and the belatedness of the employees' claim merely operates to restrict their recovery of reparation to the period subsequent to February 21, 1939. 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 Laredo 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: There is no essential difference between the controlling facts in this dispute and those in Docket CL-1621, Award 1611.

What was said in the Opinion in that case may be said with equal force in this—notwithstanding the remaining duties of the former position only require 20 minutes a day. Under the authorities cited in that case the principle there applied is decisive of this dispute.

The Carrier, having violated the agreement in assigning the remaining duties of the abolished position to an employee holding seniority rights in District No. 24, 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 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 evidence of record discloses a violation of the agreement.

AWARD

Claim sustained on the basis stated 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.