

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Bruce Blake, 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 General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad Company, that the Carrier violated the clerks' agreement.

1. When on or about September 1, 1931, it without conference, negotiation or agreement removed the crew board and the work consisting of:

- (a) Checking of the inbound crew register,
- (b) Marking up of the men,
- (c) Handling of the crew book and issuing of 'calls,'
- (d) Maintaining necessary records and reports incident to the handling of the crew board and men,

from the superintendent's office building and the clerks' seniority roster Central Kansas—Colorado Division, and located the board in the yard office, several blocks distance from the superintendent's office, and

2. Concurrently abolished the position of 'Report—Statement, Clerk,' rate \$5.39 per day, assigned hours 8:00 P. M. to 5:00 A. M., exclusive of meal period, the occupant of which regularly performed the duties 'a' to 'd' inclusive during his tour of duty, and

3. Concurrently with the changes enumerated relieved the Division Trainmaster's Clerk, rate \$6.19 per day from the performance of said duty and work during his tour of service 8:00 A. M. to 5:00 P. M., exclusive of meal period, and relieved the Chief Dispatcher of the performance of said work between the hours of 5:00 P. M. to 8:00 P. M. and 5:00 A. M. to 8:00 A. M., and assigned said work to yard clerks who are listed on an entirely separate and distinct seniority district and roster, i. e., that of stations and yards, Central Kansas—Colorado Division, and who held no seniority rights entitling them to perform said work and whose rates of pay, that is \$4.89 and \$4.64 per day, were lower than that of the Report—Statement Clerk \$5.39 per day and that of the Division Trainmaster's Clerk \$6.19 per day, to which this work here involved had attached and comprised the substance of their assigned ordinary, normal and regular duties for many years.

4. That the present rates of pay of the yard clerk positions,

1st shift— 8:00 A. M. to 4:00 P. M.—\$5.29
 2nd shift— 4:00 P. M. to 12:00 M. —\$5.04
 3rd shift—12:00 M. to 8:00 A. M.—\$5.04

be adjusted to \$5.79 per day, effective December 11th, 1940, on which date this dispute and claim was formally presented to the Division Superintendent."

EMPLOYES' STATEMENT OF FACTS: "The clerical force in the Division Trainmaster's—Chief Dispatcher's Office, which comprised a part of the Superintendent's force at Osawatomie, Kansas, were listed upon the Superintendent's Clerical Class One seniority district and roster of the Central Kansas—Colorado Division and in addition to the Superintendent's other clerical force subject to the scope and operation of the clerks' agreement, which roster was separate from that upon which yard clerks and station employees were listed, consisted of:

One—Report—Statement Clerk, rate \$5.39 per day, assigned to hours of 8:00 P. M. to 5:00 A. M., exclusive of meal period.

One—Division Trainmaster's Clerk, rate \$6.19 per day, assigned to hours of 8:00 A. M. to 5:00 P. M., exclusive of meal period.

"The rates of pay of the two positions here stipulated were those established per Clerks' Mediation Wage Agreement (Board of Mediation File No. C-337), dated November 5th, 1928, effective November 1st, 1928, copy attached and designated as Exhibit 'A-1,' 'A-2' and 'A-3.'

"The rates attaching to the three clerical positions located at the yard office and listed upon the clerks' class one seniority roster, stations and yards, which is a separate and distinct seniority district and roster from that of Superintendents' forces, were also established per agreement reached by and between the parties and was covered by Board of Mediation File No. C-337. These rates were:

First shift\$4.89 per day
 Second shift\$4.64 " "
 Third shift\$4.64 " "

to which rates 40¢ per day was applied effective August 1st, 1937, per Mediation Wage Agreement covered by Board of Mediation File A-395, thus establishing the rates on the positions as is shown in the Employees' Statement of Claim.

"When the Superintendent of the Central Kansas—Colorado Division, Mr. C. J. Brown abolished the position of Report—Statement Clerk, rate \$5.39 per day and relieved the Division Trainmaster's clerk of the performance of the clerical work here involved and removed the crew board from the Superintendent's Office Building and transferred the work from the Central Kansas—Colorado Division Clerks' Seniority District and Roster and located the crew board at the yard office, and assigned the work to yard clerks who are listed upon an entirely different and separate seniority district and roster, such action was taken and made effective in the absence of any conference, negotiation or agreement with the employees.

"On December 11th, 1940, the duly accredited representative of the employes, Mr. F. A. Conley wrote Superintendent, Mr. C. C. Chapman, copy of letter attached hereto and made a part hereof, designated as Exhibit 'B'—and requested that the rates of the three (3) yard clerk positions be adjusted to a rate of \$5.79 per day, setting out all pertinent facts and stipulating the rules of the agreement upon which he relied to support his request and claim.

not supported by a misapplication of some rule of the schedule. In this case the Carrier contends that there has been no rule of the schedule misapplied, hence it feels that the Board should properly deny the Employees' request."

OPINION OF BOARD: It would hardly seem debatable that when the Carrier removed the crew board from the superintendent's office to the yard office it breached the agreement in at least two respects: (1) it removed the work from one seniority district to another; and (2) assigned the work to employes with a lower rate of pay. But it does not follow that the claim should be sustained. Allowing that the violation is a continuing one it does not necessarily call for the application of the principle, frequently invoked by this Board, that a claim is not barred merely by acquiescence in the violation of the agreement by the Carrier extending over a long period of time. The principle is sound but it has not and should not be applied indiscriminately. Notable exceptions to its application are to be found in Awards 72, 116, 1289, and 1435. What was said in Award 1289 is of peculiar applicability to the situation presented here. The violation occurred September 1, 1931. It continued without protest from the Organization until December 11, 1940. In the meantime there had been a wage increase. The protest was filed by F. A. Conley, who during the entire period was Division Chairman of the Organization and also chief yard clerk at Osawatomie—having direct supervision of the employes in whose behalf the claim is now made. Having stood by for nine years, with full knowledge of the facts, without protesting the arrangement the Organization should not now be allowed to assert a claim for violation of the agreement.

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 laches of claimant precludes the Board from considering the merits of the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1941.