

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Michael L. Fansler, 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 violated the Clerks' agreement when it abolished the position of Steno-Clerk in the Division Trainmasters office at San Antonio and assigned all of the work to an employee not covered by the Clerks' Agreement. Also

(b) Claim that all employees involved in or affected by the carrier's action be compensated for all losses sustained.

**EMPLOYEES' STATEMENT OF FACTS:** At the close of business December 10, 1940 the position of Steno-Clerk in the Division Trainmaster's office at San Antonio was abolished.

The duties of the position were to:

1. Make "87" report.
2. Make Engine report.
3. Make overtime report.
4. Make passenger report.
5. Make vegetable loading report.
6. Make fruit and vegetable report.
7. Make Stock loading report.
8. Make stock sight report.
9. Make freight and local train arrival and departure report.
10. Make "3 A. M." train report.
11. Make "6 A. M." train report.
12. Hectographing reports.
13. Posting running records for trainmaster.
14. Write messages, make accident and personal injury reports as necessary and answer telephone.

Concurrently with the abolishment of the Steno-Clerk's position the carrier created a position of Night Division Trainmaster and assigned to that position all of the work formerly assigned to and performed by the Steno-Clerk.

Carrier that the work properly devolves upon the dispatching forces and that the establishment of a night Steno-Clerk is of a seasonal and temporary nature.

From the Carrier's statement of facts it will be noted that all the work performed by the Steno-Clerk prior to the establishment of such seasonal and temporary position was performed by train dispatchers and the night Division Trainmaster and that during the time the night Division Trainmaster was assigned all the work which was performed by the night Steno-Clerk was performed by the Division Trainmaster. The work which the night Steno-Clerk performed was the ordinary clerical duties of the night Division Trainmaster, therefore, it was interchangeable as between the position of Division Trainmaster and that of night Steno-Clerk.

During the time that the night Division Trainmaster's position was in effect there was no work to be performed by the night Steno-Clerk, and, therefore, that position was discontinued and when the position of night Division Trainmaster was discontinued, position of night Steno-Clerk was re-established. It is, therefore, the position of the Carrier that when the position of night Division Trainmaster was re-established it was proper to restore the work he had formerly performed and recognized as his duties to him and to discontinue the position of night Steno-Clerk.

In this connection, the Carrier would call the attention of your Honorable Board to Award No. 931 and the following from the opinion of your Honorable Board as contained in Award No. 1314:

"With these principles in mind we return to their practical application to the facts of this case. The carrier urges that many of the duties of the Chief Dispatcher's clerk were the ordinary duties of the Chief Dispatcher; that they were interchangeable and that the clerk's position was due to an overflow of the Chief Dispatcher's duties in busy times. If so, and we have no reason to doubt that fact, such duties as the Dispatcher retained which were incident and reasonable appropriate to his position after the abolition of his clerk's position would seem to come under the ruling of Award 931. Where the duties incidental and normal to a position not under the craft flow out directly to an assistant included in the agreement and taken on where work increased to a point where such assistance was necessary, it would seem that by the same token they could ebb back directly to the original position when the necessity for the assistance no longer existed, provided the duties so involved in the ebb and flow were such as were indigenous to that position—normal and incident to it. But they cannot be given to an excepted position."

It is the contention of the Carrier that it was not a violation of the Agreement with the Clerks' Organization to discontinue the position of night Steno-Clerk at the time the position of night Division Trainmaster was re-established and to restore the work to that position which had been performed by the night Steno-Clerk during the time that the night Division Trainmaster's position was abolished. Your Honorable Board is respectfully petitioned to so rule.

**OPINION OF BOARD:** The material facts are not in dispute. On December 10, 1940, the position of Steno-Clerk in the Division Trainmaster's office at San Antonio was discontinued and all of the duties of the position were assigned to a newly created position of Night Division Trainmaster (Night Chief Dispatcher.) The duties thus transferred consisted of from 5'48" to 8'05" of clerical work per day. The position of Steno-Clerk was last established in May, 1940, and was in existence on November 1, 1940. The rights of the parties are governed by a Rules Agreement and a Supplemental Memorandum Agreement both of which became effective November 1, 1940.

Rule 1 (a) provides that the rules shall cover the hours of service and working condition of "Group 1, Clerk, \*\*\*" and Rule 1 (b) is as follows:—

"Position referred to in this agreement belongs (sic) to the employes covered thereby and no position shall be removed from this agreement except by agreement."

"Clerks" are defined as follows—Rule 2 (a):—

"Employes who are used three (3) hours or more for the majority of the working days of the month, in the compiling, writing and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements and similar work, and to the operation of office mechanical equipment and devices shall be designated as clerks."

Paragraph (a) of the Supplemental Agreement reads:—

"(a) It is recognized and agreed that all of the work referred to in Rule 1 of the agreement dated November 1, 1940, between the carrier and the Brotherhood belongs to and will be assigned to employes holding seniority rights and working under the Clerk's agreement except as provided below."

(We are not here concerned with the exceptions.)

The carrier says that this language is clearly definitive of the intent of the parties and requires that the work encompassed must be found encompassed by Rule 1 of the Controlling Agreement.

The work consists of compiling reports and posting records for more than three hours each day. Rule 2 (a) must be considered as part of Rule 1 since its only office is to define the word "clerks" as used in Rule 1. Under this definition all employes who are engaged in compiling reports and posting records for more than three hours per day are clerks and it must necessarily follow that the doing of such work for more than three hours per day is clerk's work.

In stating its position the carrier says:—

"The work which the night Steno-Clerk performed was the ordinary clerical duties of the Night Division Trainmaster."

This statement concedes that the duties are clerical but it is inaccurate in describing them as "the ordinary duties of the Night Division Trainmaster," since when the Steno-Clerk was employed there was no Night Division Trainmaster. The new position was created because of an increase in business but there seems to be insufficient work to occupy a Trainmaster full time and he was given seven hours per day, approximately, of already existing clerical work.

The carrier also says:—

"Rule 1 referred to in Section (a) of the Memorandum Agreement deals exclusively with positions and does not classify the work which comes under the Clerks' Agreement and it is only when the employes who are listed in Rule 1 are assigned to perform clerical work that such employes come under the provisions of the Clerks' Agreement."

But Rule 2 (a) provides that employes who are used three hours a day in clerical work shall be designated (i. e. listed) as clerks.

The contention that the agreement deals with positions and not with work is based upon certain language in Award No. 615 (Docket No. CL-550). It was there said that:—

"\* \* \* it is a mistaken concept that the source of the right to exclusive performance of the work covered by the agreement is to be found in either the scope or seniority rules; they may be searched in

vain for a line even implying that they purport to accord to the employees represented the exclusive right to the performance of the work covered by the agreement."

But here we have the supplemental agreement expressly providing:

"The work referred to in Rule 1 \* \* \* belongs to and will be assigned to employees holding seniority rights and working under the Clerks' agreement except as provided below." (There is no contention that the instant case is covered by the exceptions.)

The other awards chiefly relied upon by the carrier deal with the allocation of clerical work amounting to less than three hours per day and not to the classification of an employee doing more than three hours clerical work and therefore they are not in point.

The provisions of the agreement are clear and unambiguous and we may not look beyond its terms to find the intention of the parties.

The newly appointed employee regularly performs clerical work as defined by the agreement for more than three hours each day. By the terms of the agreement he is a "clerk" and the position is a clerical position notwithstanding he is designated by the carrier as "Night Division Trainmaster."

**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 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 carrier violated the current agreement as contended by the petitioner.

#### AWARD

Claim (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 8th day of October, 1942.

#### DISSENT TO AWARD NO. 2005, DOCKET CL-1662

The Opinion of this Award has led to improper decision because of unwarranted extension of the purposes of the parties when entering into the Memorandum Agreement effective November 1, 1940, and Rule 2 (a) of the Schedule Agreement. Rule 2 (a) could not and was never intended to relate to employees not covered by the Clerks' Agreements, and has been universally accepted to be none other than a line of demarcation between two classes of employees both of which are within the scope of the Clerks' Agreement. By the very nature of railroad employment of many other crafts outside of this Agreement, who ever and inseparably with their positions covered by other agreements necessarily perform clerical work, this Clerks' Agreement could not possibly extend as a definition to encompass the positions and duties of these employees of other crafts.

The Memorandum Agreement effective November 1, 1940, was negotiated and agreed to by this Carrier only because it could have no other understanding but that the scope rule of the Clerks' Agreement could not possibly include any of the clerical work attaching to these other positions not covered by the Clerks' Agreement. In all realism the Clerks' representatives too must have known and recognized that fact, for it is one that cannot be discredited or destroyed without destroying the industry itself.

To then attribute to this Memorandum Agreement, as does this Opinion, the purpose of encompassment of all clerical work, inclusive of that covered by the Clerks' Agreement and of that covered by all of the agreements of other classes as well as that performed by employes in positions not covered by any agreement, is to endow that Memorandum with a purpose too unreal to admit of acceptance or adoption in the practical business of operating this railroad.

The strict adherence of this Opinion to the literal meaning of words in the Agreement's provisions (stated by the Opinion to be "clear and unambiguous") has made those provisions devoid of reality in this case and of any useful meaning in respect to the object of their application, which is the operation of the railroad.

/s/ R. F. Ray  
/s/ C. P. Dugan  
/s/ A. H. Jones  
/s/ R. H. Allison  
/s/ C. C. Cook