# Award No. 2011
# Docket No. CL-1981

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Michael L. Fansler, Referee**

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## PARTIES TO DISPUTE:

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

## THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY

**(L. C. Sprague, Receiver)**

**STATEMENT OF CLAIM:** Claim of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Minneapolis & St. Louis Railroad that the carrier violated the Clerk's agreement;

1. When on and after August 3, 1940 the carrier allowed and continued to allow a group one (1) employe or excepted position employe to perform group three (3) work in the Minneapolis Storehouse on Saturdays.

2. When on and after August 3, 1940 the carrier laid off, and continued to lay off, the senior group three (3) employe every Saturday and on which Saturdays there was group three (3) work to perform and group three (3) employes available to perform same.

3. That W. P. Anderson, senior group three (3) employe, be paid for every Saturday he was laid off and a group one (1) employe or excepted position employe allowed to perform his work from August 3, 1940 until the practice was stopped.

**EMPLOYES' STATEMENT OF FACTS:** On July 27, 1940 Local Chairman Varnum discussed with Storekeeper Carlson the above described violation and requested that the violation be discontinued. On July 29, 1940 the Local Chairman filed formal claim shown as Exhibit "A."

Exhibit "B" shows Storekeeper Carlson's refusal to comply with the Local Chairman's request and the Storekeeper's decision was appealed to the Purchasing Agent on August 6, 1940. See Exhibit "C."

Purchasing Agent Matthews also denied this appeal and the file was turned over to the General Chairman for further handling and appeal to the highest officer of the railroad designated for that purpose and who is the Assistant General Manager.

In conference with the Assistant General Manager July 8, 1941 this claim was discussed and at that conference Assistant General Manager Ryan said he understood our position in the matter and would write his decision. On August 5, 1941 this matter was again brought to his attention and another conference was set for September 16, 1941.

At that conference the General Chairman called Assistant General Manager Ryan's attention to his remarks of the previous conference and Mr. Ryan

(1) employe and the truck driver, to be off duty on alternate Saturday afternoons, allowing each man eight hours pay for those days that he worked only five and one-half hours.

When shops are closed on Saturdays there is not enough work in the Storehouse to fully occupy the time of one empolye. The office is closed at 12:30 P. M. on each Saturday and the Store room is kept open to receive occasional deliveries and to deliver a limited amount of materials.

The group one (1) employe, who is the Local Chairman of the Clerks, offered no objections to using a group three (3) employe to take care of the limited work required of a receiving clerk on the Saturdays the shops were closed and when the Sectional Stockmen were assigned to work five days per week.

**POSITION OF CARRIER:** The agreement, in Carrier's opinion, permits a group one (1) employe to do work ordinarily required of group two (2) and group three (3) employes. If that was not so, it would be necessary for the Carrier to employ at stations where an agent and clerk only is employed to also employ a group two (2) employe to do janitor work and a group three (3) employe to handle such freight as is handled at the stations. The right to use employes in more than one service is illustrated in Article three (3) reading:

> "Employes who are regularly required to devote more than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work, and to the operation of office mechanical equipment and devices in connection with such duties and work, shall be designated as clerks. The above definition shall not be construed to apply to office boys, messengers, chore boys and other employes performing office or manual work not requiring clerical ability."

The intent of Article three (3) is to permit an employe in one group to do a limited amount of work, normally required of an employe in another group under the same agreement without changing his classification.

On the basis of the facts herein outlined, we feel that the claim should be denied.

**OPINION OF BOARD:** During the period covered by the claim the shops were closed on Saturdays and the employes in the storehouse other than the clerk and truck driver were working only five days per week. The clerk and truck driver were on a permanent six-day schedule but were permitted to be off duty on alternate Saturday afternoons without pay deduction. Is is not disputed that during this time "there was not enough work in the storehouse to fully occupy the time of one employe."

It is not clear as claimed that the foreman performed any work covered by the Agreement on Saturdays and since there was not sufficient work to fully occupy the time of one employe it must be assumed that the foreman did none of the work or that if he did work it was merely as a courtesy to or for the convenience of the other employe. We conclude that this does not violate the Agreement.

The Agreement provides that employes regularly required to devote more than four hours per day to clerical work shall be designated as clerks. "Regularly" must be interpreted as meaning "normally" or "as a rule"; otherwise positions requiring more than four hours clerical work on five days per week and not more than four hours on the sixth need not be classified as clerical. Group (2) or (3) employes who irregularly or occasionally do more than four hours per day of clerical work need not be classified as clerks.

The claimant contends that Article I of the Agreement not only classifies employes into three groups but that it also subdivides the work within the scope of the Agreement. That because of the rule which provides that sen-

iority "shall apply separately in accordance with the subdivisions of Article I" all group (3) work must be assigned to employes falling into group (3) classifications. The subdivision under Article I is:

(1) "Clerks"

(2) "Other office and station employes" (the remaining language is merely illustrative).

(3) "Other employes in and around stations, storehouses and warehouses." It is agreed that claimant falls within group (3).

In Article III "clerks" are defined as "employes who are regularly required to devote more than four hours per day to" clerical work. We may substitute the definition for the word without changing the meaning and the classification will read:

Group (1) "Employes who are regularly required to devote more than four hours per day to clerical work"

Group (2) "Other office and station employes" i. e. office and station employes who are not **regularly** required to devote more than four hours per day "to clerical work."

Group (3) Employes in and around stations, storehouses and warehouses who do not fall within groups (1) and (2).

The Agreement provides that all group (1) and (2) employes shall be on an eight hour day and six day week schedule. Under this classification a Baggage Room employe, for illustration, whose work consists of handling baggage and doing clerical work and who is occasionally but not regularly required to do clerical work for more than four hours per day must be classified as a group (2) employe notwithstanding little less than half of his work is clerical. It follows therefore that clerical work is not set off as work to which group (1) employes have the exclusive right. Then what work belongs exclusively to group (1) employes? There is nothing in the Agreement allocating any particular work to group (1). It does not give all clerical work to group (1) and it does not purport to give all non-clerical work to groups (2) and (3). It merely classifies positions on the basis of preponderating work. Group (1) employes are those who do mostly clerical work. There is no provision that they shall not do other work. Groups (2) and (3) are merely **other employes** whose work is not principally clerical—there is no provision that they shall not do clerical work. The requirement that all positions doing more than four hours clerical work shall be classified in Group (1) insures those positions to members of the Group. There is no provision insuring positions regularly requiring less than four hours per day of clerical work to groups (2) and (3). Since one group only is thus expressly protected it must be concluded that a like protection for the others would have been expressed if intended. Group (1) seems to have been considered a higher or more desirable classification and the rule seems to have been intended to prevent underclassification of those positions in which clerical work preponderates. It has been consistently recognized by this Board that a certain amount of incidental clerical work necessarily attaches to a great many positions not rated as clerical. The Agreement falls far short of providing that those who are required to do clerical work for more than four hours per day shall not be permitted to do any other work for the remainder of their eight hour six day weekly assignment. The work here involved was not sufficient to fully occupy the time of one employe. It included some service ordinarily performed by a stock man and some ordinarily performed by a clerk.

The employes rely upon Awards No. 1306, 1440 and 1459 but in each of those cases the facts differed materially from those in the instant case.

In Award No. 1306 it appeared that a second Baggageman position was created and the entire work of a full time Stevedore position was turned over to the two Baggageman positions.

Award No. 1440 involved a transfer of duties from a position in the **Accounting Department** to a position in the **Transportation Department,** a different Seniority District.

Award No. 1459 involved transferring all of the work of a full time Group (3) position to several Group (1) employes.

The point is stressed in both 1306 and 1459 that there was no decrease in the amount of work to be done—that the full time duties of the abolished positions remained. But here no position was abolished and there was not sufficient work to occupy the full time of one employe.

It must be concluded that where the work partly clerical required on a given day is not sufficient to fully occupy the time of one employe it may all be assigned to a clerk without violating the Agreement. We are not advised of the proportion of clerical work required but we are not concerned since there is no complaint that a clerk was not employed on the Saturdays when the truck driver (Group (3)) was alone on duty. No claim for compensation is made on account of the days worked by the truck driver.

**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

The carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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