

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

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

(1) Carrier violated and continues to violate the Clerks' Agreement, when it assigned higher rated work to lower rated employees and failed and refused to apply the higher rate, and

(2) That Clerks D. L. Winn, C. F. Robinson and Otto Orman shall now be paid the higher rate for the actual hours each month devoted to higher rated work retroactive to April 1, 1938, less compensation previously received for those hours.

EMPLOYES' STATEMENT OF FACTS: Prior to April 1, 1938 V. D. Matthews was assigned to and occupied position excepted from the scope and application of our agreement, this position being classified as Chief Car Record Clerk, rate \$235.00 per month, and the duties thereof were as follows:

1. Checking per diem claims
2. Figuring per diem
3. Phone work (diverting empty tank cars, home routes, car records, etc.)
4. Tax mileage by states
5. Posting blind siding reports
6. Count of coal car book for equalization purposes
7. Adding coal car equalization book
8. Answering correspondence
9. Recap reclaims and adjustment
10. Balancing and mailing per diem
11. Completing previous month's blind siding statement
12. Drawing off tax mileage
13. Posting reclaims
14. Drawing off tax and figures for private line equalization
15. Preparing Kansas tax report
16. Posting RM-20, 21 and 22 figures
17. Recap per diem
18. Posting previous month's OS reports
19. Drawing off equalization tank car reports
20. Drawing up OS data forms.

Prior to April 1, 1938 and for a continuous period of approximately seven years J. L. Dodson was assigned to and occupied a position excepted

rate of pay because of the character of the duties and the degree of skill and experience required for their performance, as compared with the work previously performed by the occupants of such positions.

It is not difficult now to see what the answer would have been. It takes but a glance at the description of the work set out in the "Carrier's Statement of Facts" to determine that not a single item of work can be found which could possibly be claimed to be "higher rated" work.

As to each of the three positions, it will be noted that the employees allege "This position is improperly classified." The Clerks' Agreement does not set out different classifications or different rates of pay for different classes of work, nor are there any "negotiated rates" covering these positions. In fact, no rates of pay are shown in the Clerks' Agreement at all. Any question as to increase in rates of pay must necessarily be subject to Section 6 of the Railway Labor Act.

The employees' own contentions show that without the additional work complained of there would not be sufficient work on each of the three jobs to keep the occupants busy. The additional work given employees was clerical work related to their regular duties. It did not impose on any of these clerks any additional hours of service or additional burden of responsibility. There is absolutely nothing that could justify the contentions made. The work in question represents the simplest kind of clerical work and requires much less experience than the other regular duties of the claimants.

There is no merit whatever in the employees' claims and contentions. But even if merit could be found, the claimants would be barred by the failure of the employees to comply with Rule 24 of the agreement.

Carrier's exhibits are as follows:

Exhibit A—Copies of letters exchanged between the committee and the management, Sheets 1 to 19 inclusive.

Exhibit B—Samples of certain reports mentioned in the employees' claim.

OPINION OF BOARD: The claim in this case involves the right of three clerks, viz.:—D. L. Winn, C. F. Robinson, and Otto Orman, to be paid at a higher rate for the actual number of hours in each month which each of them devoted to a higher rated work, retroactive to April 1st, 1938, less compensation previously received for those hours. The principles involved in the decisions are of considerably greater importance than the sums claimed by the clerks, which are not large from a monetary standpoint, and require an effort on our part to determine the meaning of certain provisions of the Clerks' Agreement, the effect of excluding certain positions from that Agreement, and an effort to arrive at what the parties really meant when they entered into it.

It is the understanding of the referee, and probably of the general public, that these agreements are made for the purpose of promoting harmony in the relationships between labor and management in the railroad industry, and that neither party to the agreements intends nor expects that they shall be so construed and applied as to promote discord, inefficiency, or a wasteful application of the revenues of the railroad in its efficient operation for the benefit of the public as well as for the benefit of labor and management. Certainly the public, the employees, and the management all realize the importance of fair and just treatment of labor by management; and this is exemplified by the Act of Congress from which we derive our powers.

Management cannot run a railroad without labor; and labor cannot run a railroad without management. Neither of them, nor both together, could run a railroad without capital; and we as an adjustment board, could not exist except by a power given through Congress which represents the public, which is not only disinterested as to small disagreements, but is highly impatient with them. Our duty to the public, the management, and labor, is fairly to examine these agreements from one end to the other,

modifying each sentence and paragraph by the provisions of each and every other sentence and paragraph, so that the whole instrument may be applied with reasonableness, without discrimination and in the interests of harmony.

The precise claim in this case is that the three clerks named above, since April 1st, 1938, have been required from their viewpoint, or permitted from the managerial viewpoint, to perform certain clerical work which had theretofore been assigned to and performed by a certain V. D. Matthews, who at that time held the position of Chief Car Record Clerk, at a salary of \$235.00 per month, which figures out about 98 cents per hour.

Twenty items of duty, all of them clerical, are specified by the employes as having previously been performed by Mr. Matthews.

1. Checking per diem claims
2. Figuring per diem
3. Phone work (diverting empty tank cars, home routes, car records, etc.)
4. Tax mileage by states
5. Posting blind siding reports
6. Count of coal car book for equalization purposes
7. Adding coal car equalization book
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An examination of these duties indicates that they were undoubtedly clerical in nature and would come under the Clerks' Agreement if not excluded. However, Article 1 of the Agreement, which is the Scope article, expressly excludes the position of Chief Car Record Clerk, and it definitely closes the door to any claim that this employe or any of his duties were subject to the terms of that agreement. It is not disputed that he performed these clerical duties as a part of his position as Chief Car Record Clerk. Neither is it disputed that on the date above mentioned, the position of Chief Car Record Clerk was abolished, and those clerical matters which Mr. Matthews had theretofore attended to, were left to the other clerks to perform. It is not contended that they did not receive their regular rate of pay in doing this work; nor is there any question but that they received overtime if any was required. The bare contention is, that for those specific clerical duties which Mr. Matthews had previously performed these other clerks in the office must be paid at an hourly rate which would amount to \$235.00 per month—the salary which Mr. Matthews was then receiving not under the agreement but outside of it. In support of this contention the employes call attention to Awards Numbers 674, 675, 1544, 1598, and 1600; also U. S. Railroad Labor Board Decisions Numbers 3537 and 3815; and Interpretation No. 1 to the first named decision. They also call attention to Rule 39 which provides that employes temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions and that employes temporarily assigned to lower rated positions shall not have their rates reduced. So far as Rule 39 is concerned, it is a complete answer to say that none of the named employes have been assigned either temporarily or permanently to the position of Chief Car Record Clerk.

As to the Awards which are cited as named above, each of them apply to a situation where an employe was required to do work which either under an agreement of his own Brotherhood, or of another Brotherhood with the same carrier a higher rate of pay applied; and it was held that the employe would be entitled to the higher rate of pay. The principle is not disturbed by our present opinion, and it is unnecessary to discuss it because conceding its justice, it is not here in question.

The question here is whether or not the employer may assign work which it must be conceded is not and never has been, under the agreement, to employes under the agreement at their regular rate of pay. Neither Mr. Matthews' personal compensation nor any part of the work which he did was ever under the agreement, and it never carried any rated pay for any particular work. It is definitely provided by the Scope Rule that the office force of Vice President, of General Superintendent of Transportation, the Chief Clerk of the Traffic Department, the Chief Clerk and personal stenographer in the purchasing and treasury department, the office force in the law department, and the chief clerk, personal stenographer, head receipts clerk, head payroll clerk and head general accounts clerk are not under the agreement. It follows that none of the duties of any of these excepted positions are in any way governed by the rule, and none of the work performed by any of these persons is "rated" under the agreement.

If we should hold otherwise that thus, it would not only appear unreasonable to the average person, but would undoubtedly work a hardship on the Brotherhood of Railway and Steamship Clerks. To allow this claim would mean that none of the members of the Clerk's Brotherhood could be given any work from any of these excepted positions except upon a penalty to the management. It is probable that all of the excepted department heads do certain clerical work for themselves. Probably each of them keeps some kind of a personal memorandum and personal account of what is going on in his department. Under the claim sought here to be enforced it would be prohibitively expensive for the Vice President, who probably receives a large salary, to turn over any of these details to a member of the Clerks' Brotherhood, because it might carry with it a rate of several dollars per hour; whereas if some of these officials who are not under the agreement, are free to do so, they may from time to time give additional work to employes who would probably be glad to get it at their regular rates.

We find that there has been no violation of the Rules of the Agreement, and that the claim should be denied.

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 there has been no violation of the Rules of the Agreement, and that the claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.