

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, 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 Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. On December 8th, 1941, when it abolished the position of "clerk" occupied by J. L. Bishop, rate \$4.79 per day, (\$5.59 per day per wage settlement December 1941) assigned hours 5:00 P.M. to 9:00 P.M.—10:00 P.M. to 2:00 A.M., six days per week, and removed the substance of the clerical work and duties thereof consisting of:
 - (a) Weighing cars and compiling scale tickets, and
 - (b) Billing coal,out from under the scope and operation of the Clerks' Agreement and assigned said clerical work to employees not covered by the Clerks' Agreement and who hold no seniority rights thereunder entitling them to perform said work.
2. Following the restoration of the position of "clerk" on December 31st, 1941, to assigned hours of 5:00 P.M. to 9:00 P.M.—10:00 P.M. to 2:00 A.M., rate \$4.79 per day, (\$5.59 per day per wage settlement as of December 1941) and the subsequent abolishment of the position on February 14th, 1942, it on March 8th, 1942 discontinued giving the Day Yard Clerk, assigned hours 7:00 A.M. to 11:00 A.M.—12:00 noon to 4:00 P.M., six days per week, rate \$4.79 per day, (\$5.59 per day per wage settlement as of December 1941) a "call" each evening, except Sundays and holidays to "weigh cars and compile scale tickets" which had been given this employee effective February 14th, 1942, and removed the said clerical work of weighing cars, compiling scale tickets and billing coal out from under the scope and operation of the Clerks' Agreement and assigned the work to employees not covered by the agreement and who hold no seniority rights thereunder entitling them to perform said work.
3. That the occupant or occupants of the position of "Day Yard Clerk"—Paris, Ark., hours 7:00 A.M. to 11:00 A.M.—12:00 noon to 4:00 P.M., rate \$4.79 per day, plus eighty cents (.80) per day effective December 1st, 1941, or \$5.59 per day, be compensated for a "call"—or \$2.10 per day, effective December 8th, 1941 and each day thereafter exclusive of

Sundays and holidays, except Sunday—December 28th, 1941, on which date the agent weighed four cars, until and inclusive of the date the Day Yard Clerk was restored, account of the Carrier's action taken in violation of the Clerks' Agreement.

4. That the occupant or occupants of the position of "Day Yard Clerk" at Paris, Ark., hours 7:00 A. M. to 11:00 A. M.—12:00 noon to 4:00 P. M. rate \$5.59 per day be compensated for a "call"—or \$2.10 per day effective March 8th, 1942 and thereafter until effective on March 21st, 1942 on which date the record shows the Day Yard Clerk position was abolished, account of Carrier's action taken in violation of the Clerks' Agreement."

EMPLOYEES' STATEMENT OF FACTS: On December 8th, 1941, the station force at Paris, Ark., subject to the scope and operation of the Clerks' Agreement consisted of:

Cashier	Rate \$5.69 per day	9:00 A. M. to 1:00 P. M. 2:00 P. M. to 6:00 P. M.
Yard Clerk	" \$5.59 per day	7:00 A. M. to 11:00 A. M. 12:00 N. to 4:00 P. M.
Clerk	" \$5.59 per day	5:00 P. M. to 9:00 P. M. 10:00 P. M. to 2:00 A. M.

and in addition thereto there was a station force at Paris, Ark. not subject to the provisions of the Clerks' Agreement as follows:

Agent—(Exclusive or supervisory agent.)

Telegrapher8:00 A. M. to 4:00 P. M.

Telegrapher4:00 P. M. to 12:00 Midnight

On August 4th, 1941, the Division Superintendent issued bulletin No. 33, copy submitted and designated as Exhibit (a), establishing a position of "clerk" at Paris, Ark., assigned hours 5:00 P. M. to 9:00 P. M.—10:00 P. M. to 2:00 A. M., rate \$4.79 per day.

On August 9th, 1941, per Superintendent's bulletin No. 33-A, copy submitted and designated as Exhibit (b), Clerk J. L. Bishop was assigned to the position advertised per bulletin No. 33.

Effective December 8th, 1941, the Carrier nominally abolished the clerical position advertised per bulletin 33 and assigned to Clerk Bishop per bulletin 33-A and failed to furnish the Division Chairman of the Clerks' Organization with a copy of an abolishment notice. The first information the Division Chairman had that the position had been abolished was when he received a copy of letter Clerk Bishop wrote to the Superintendent and the Chairman jointly on December 8th, 1941, copy submitted and designated as Exhibit (c) advising of his desire to exercise his seniority on position at Camp Chaffee effective December 10th, 1941, however, the Superintendent did on December 15th, 1941, seven days after the job was abolished, write to the Agent at Camp Chaffee, copy to the Division Chairman, copy of which letter is submitted and designated as Exhibit (c-2) and advised that the position had been abolished at Paris, Ark., but did not then show the date of the abolishment.

On January 11th, 1942 the Division Chairman wrote the Superintendent with regard to failure to comply with the agreement and furnish him with copy of abolishment notice, copy submitted and designated as Exhibit (c-3) to which the Superintendent replied on January 30th, 1942 and said the notice was sent to former Division Chairman Mr. Joe Smith in error. Copy of the Superintendent's letter of January 30th, 1942 is submitted and designated as Exhibit (c-4).

There is also submitted Carrier's Exhibit "B," statement showing the number of carloads of freight weighed at Paris, Ark. recapitulated from the Form 263 (see quotation from Rule 765 above) for the period August 1941 to April 1942, inclusive.

POSITION OF CARRIER: In the presentation of this case to the Management, the Employees contend that the weighing of cars and the compiling of scale tickets and billing of coal was removed from out of the scope and operation of the agreement on or about December 8, 1941.

The Management's contention is that there is no rule included in our agreement with the Clerks' Organization that gives unto them the exclusive right of performing all clerical work at its stations. The force established at the various stations on the railroad is that necessary to handle ordinary station work. First, and foremost, is it necessary to have an agent at a station. He does all station work, including the clerical work incident to keeping his station accounts, records, etc. When the business reaches the point where the agent can no longer handle it by himself, he is given additional help. If this additional help requires the services of a telegraph operator, an employe of this class is assigned. If telegraphic duties are not a part of the work to be assigned to the added force, then under ordinary conditions a clerk or a helper, or an employe from this classification, generally subject to the rules of the Clerks' Agreement, is assigned. Irrespective, however, whether it be a telegraph operator or a clerk, the agent, the telegraphers and the clerks all do station clerical work. The only prohibition in the establishment of such forces is that none other than classes of employes covered by the agreement with the Telegraphers' Organization are permitted to handle the sending and receiving of messages, handling of train orders, etc., that is an exclusive duty of telegraph operators.

There are no rules in our agreement with the Clerks' Organization to support the Employees' claim that the weighing and billing of cars at the Paris station is an exclusive duty of clerical forces.

In the presentation of this claim to your Honorable Board, the Employees are requesting not only the restoration of the position of clerk that was discontinued as has been the practice for a number of years at the completion of the heavy coal handling season on March 8, 1942, but are also asking that the day yard clerk at Paris, Ark. be additionally compensated to the extent of \$2.10 per day from December 8, 1941 to December 28, 1941, and on and after March 8, 1942 on the theory that cars were weighed by other than clerical forces at that station. The Employees have presented no such monetary claims to the Management from any of its employes, nor have they ever stated in the handling of this claim with the Management the name of any employe to whom they request such a monetary contribution be made.

The Carrier feels that such a monetary claim as presented by the Clerks' Organization to your Honorable Board is not only without merit, but is a step far beyond that contemplated by the signatories to the agreement between the Railroad and the Clerks' Organization that was last revised in 1926 providing for an orderly procedure for the handling of grievances that may arise in the application of the rules of the agreement.

OPINION OF BOARD: The employes contend that the carrier took work, weighing of cars and billing of coal out from under the scope and operation of the Clerks' Agreement and assigned such work to employes not covered by the agreement.

The facts disclosed by the record are not disputed. They present a question as to the interpretation of the Scope Rule and the effect of the agreement dated January 29, 1940.

In Award No. 1638 this Division decided the questions here raised in favor of the Employees, and we find no present reason to disagree with the

decision announced in that Award. It was there pointed out that on the strength of the January 29, 1940, agreement the Organization withdrew several claims it had filed.

The Carrier speaks of the supplemental agreement as the "Paragould Settlement" and objects to giving it general application to other stations. By its plain terms, however, it applied to "such points as Paragould where clerical forces are employed." The only limitation on the points where it is to apply is found in the words "where clerical forces are employed."

When the agreement was executed clerical forces were employed at the point here in question.

In Award 1638 this Division correctly decided that the Carrier may not avoid the terms of this supplemental agreement by the simple expedient of dispensing with the services of clerical help at a station. If the Carrier could do this the agreement would mean nothing.

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 employe involved in this dispute are respectively carrier and employe 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 Agreement as alleged in the claim.

AWARD

The claim, 1, 2, 3 and 4, is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of September, 1943.

DISSENT TO AWARD NO. 2328, DOCKET CL-2222

This Docket CL-2222 came before the Third Division, with Referee H. Nathan Swaim sitting as a Member thereof, jointly with Dockets CL-2162 to 2167 incl., Awards 2253 to 2258 incl., on the question of notice of hearing to involved employes, including those employes outside of the Clerks' Agreement who are now performing the work which the Clerks' Organization contends is covered by the Agreement. The key award in those cases, Award No. 2253, Docket CL-2162, in the second and third paragraphs of the Opinion of Board, thus stipulates and reference accordingly is here made to that Award No. 2253.

The first 25 paragraphs of the Opinion of Board in Award No. 2253, Docket CL-2162, deals with the question of this Division's obligation to serve such notice of hearing upon involved employes, and those paragraphs on that question were therefore equally applicable in reaching the decision in the instant case.

As shown by the Opinion of Board in Award No. 2253, and by the dissenting opinion thereto, there was a different handling of that group of cases from that which developed in the instant case in that no hearing in the Dockets CL-2162 to 2167, inclusive, was at any time afforded the respondent. In the instant case the further handling by this Division, with Referee H. Nathan Swaim sitting as a Member, accorded the respondent the facility of a hearing. However, in other respects relating to the denial of advice by notice of hearing to involved employees and by rejection of documents submitted on behalf of such involved employees by their representative, the Order of Railroad Telegraphers, the handling was no different. In the instant case the procedures in respect to notice of hearing to involved employees and in respect to rejection of documents submitted under date of June 14, 1943, on behalf of such involved employees previously followed by this Division for three preceding years, were reversed just as they had been in handling the dockets resulting in Awards 2253 to 2258 inclusive, with the consequent error which now also appears in the Award in the instant case.

The elemental issue which the instant dispute presented, alike with the disputes in Dockets CL-2162 to 2167 inclusive, was that of claimed exclusive right to the work in question in each of the individual disputes. Compliance with the normal complete procedures of this Division theretofore followed required the customary and legally necessary action to secure and admit all the evidence which would have placed this Division in a position to decide that issue accurately and conclusively. As above noted, the Opinion of Board in Award No. 2253, in the first 25 paragraphs thereof, deals with the question of procedure. Similarly, the dissent to Award No. 2253, in the last 14 paragraphs thereof, deals with the resulting narrowly limited consideration and disregard of evidence essential to a proper decision upon that issue. Reference is here made to those respective paragraphs of the Opinion of Board and of the dissent to Award No. 2253; they are applicable to the handling given the instant Docket, CL-2222, as they were applicable to the handling in Dockets CL-2162 to 2167 inclusive. Because of their accessibility, those paragraphs will not here be repeated.

Here, as in those preceding dockets, it was the obligation of the Division to admit and consider the evidence known to exist, available from the submitted but rejected presentation from the Order of Railroad Telegraphers, thus enabling the Division to properly determine the issue of claimed exclusive right to the work in question which the dispute presented.

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