

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-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(1) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) violated and continues to violate its agreement with the organization when on August 18, 1942, it reclassified the positions of Chief Clerk to the Agent at St. Louis, Kansas City, Dallas, Fort Worth, Houston and San Antonio to that of Assistant Agent; removed the positions from the scope and operation of the agreement extant between the parties; and

(2) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) refused and continues to refuse to classify and restore the positions to the scope and operation of the Clerical agreement, and

(3) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) shall now be required by an appropriate award and order of the Board to classify and restore all of the said positions to the scope and operation of the agreement rules extant between the respective parties, there to remain until removed therefrom by the proper processes set forth in the agreement and Railway Labor Act—1934—amended, and

(4) That the following employees, who are on the positions as indicated and were on the said positions on April 21, 1942, will be reimbursed for any and all money losses suffered by reason of the illegal and unlawful act of the carrier in reclassifying the positions as indicated; and they shall preserve and maintain their seniority and rights upon the Clerical seniority roster:

Name	Title	Location	Seniority date on Clerical roster as of July 1, 1942
W. S. Reese,	Chief Clerk,	Dallas	June 1, 1929.
H. H. Precht,	Chief Clerk,	Kansas City	On District Roster as of December 28, 1933.
F. M. Hennen,	Chief Clerk,	St. Louis	February 18, 1914.
J. F. Fogg	Chief Clerk,	Fort Worth	March 19, 1918.
B. J. Logan,	Chief Clerk,	San Antonio	January 1, 1918.
C. E. Blossom,	Chief Clerk,	Houston	September 12, 1932.

EMPLOYEES' STATEMENT OF FACTS: On July 1, 1920, the carrier asked the concurrence of the organization to exclude from agreement coverage the positions of Chief Clerk to the Agent at several of the so-called larger stations, including St. Louis, Kansas City, Dallas, Fort Worth, Houston and San Antonio. The request of the carrier was granted and an agreement made excluding the said positions from the scope and operation of the clerical agreement. The exclusion was incorporated in the current agreement dated August 1, 1925.

On April 1, 1942, an agreement was had with the carrier, to become effective May 1, 1942, the purpose of which was to restore to the scope and operation of the clerical agreement (with certain exceptions) the positions of Chief Clerk in the office of Station Agents at St. Louis, Kansas City, Dallas, Fort Worth, Houston and San Antonio, as well as at other points.

The points set forth in the foregoing are the only ones that are involved in this dispute.

On August 18, 1942, the Vice President and General Manager, Mr. F. W. Grace, under file 2559-N, wrote the General Chairman of the Clerks' organization and advised that "Assistant Agents" will be designated at St. Louis, Kansas City, Dallas, Fort Worth, North Fort Worth, Houston and San Antonio.

(Note: The position at North Fort Worth is not involved in this dispute since it does not appear in the agreement of April 21, 1942.)

On and after August 18, 1942, the carrier regarded the positions as "Assistant Agents," and contended that there was no position at the respective stations that was classified as "Chief Clerk."

The positions at the several stations have always performed the following duties: supervising the office and the office force, examining and verifying the work of the other clerks in the office; writing letters to be signed by the Agent or with the Agent's signature; preparing certain monthly station reports; answering the telephone and giving information to the public and other departments of the railroad; handling special items about which complaints have been received; keeping the time roll; reporting to the Agent any irregularities occurring in the office; maintaining order in the office, noting the absentees from the office, and similar work as it may occur from time to time.

The employes on the positions in question do not sign their own name to the letters or documents. They report to the Agent and not to the Superintendent. Their office hours are substantially the same as the other clerks in the office.

The positions perform no telegraphing or do work of a similar nature. There are no telegraph wires "into" the several freight offices in which are located the positions in question.

There was no agreement coverage by any organization applying to positions of "Assistant Agent" at the several stations involved in this dispute on April 21, 1942. (See Award No. 1785—Docket TE-1631—Third Division—National Railroad Adjustment Board—April 24, 1942, Volume 16, page 197, second paragraph marked "B.")

"Others than clerk (except telegraph operators) at Wichita Falls performing clerical work that aggregates more than four hours."
(Emphasis supplied.)

As an illustration of the petitioner's inconsistency in setting up a hard and fast class of work scope for this agreement, while pursuing a wholly different line for work that is not clerical, and not a part of the work covered in the agreement to be performed by Groups 2 and 3 of his agreement, attention is called to the carrier's Exhibit "G," being a letter of petitioner to the carrier, dated October 6, 1942. Page 3, he says—

"we want assigned to those positions (chief clerks) the work that they were performing on July 1, 1920. . . ."

and then he mentions items of answering the telephone, handling complaints, noting absentees; and other purely supervisory duties.

Thus would the petitioner expand the scope of his agreement and require the performance of work not in any degree clerical; nor meeting in any manner the items in Rule 1 under which employe is to be designated as a clerk, if such performance meets the time element provision of 4 hours, regularly, per day.

The Carrier calls attention to its letter of February 18, 1943, to which was attached a letter from General Chairman of The Order of Railroad Telegraphers, dated February 10, 1943, concerning this dispute, and asks that that letter be made part of the record in this case.

Except as herein expressly admitted by the Carrier, the Carrier denies each and every, all and singular the allegations of the employes' submissions and respectfully requests that the petitioner be placed on strict proof of each and every, all and singular the allegations contained in said employes' submissions.

OPINION OF BOARD: This docket involves a dispute concerning six positions located at Dallas, Kansas City, St. Louis, Ft. Worth, San Antonio and Houston.

The employes insist that the positions in question are positions of Chief Clerks while the carrier claims that the positions are, and for many years have been, properly classified as Assistant Agents and, therefore, not covered by the Clerks' Agreement.

The Clerks' Agreement executed in July, 1920, and the current agreement, dated August 1, 1925, excluded the position of Chief Clerks. On April 21, 1942 the parties signed what they termed a "Memoranda of Agreement," §2 of which provided as follows:—

"The following positions, which are now excluded from the Scope Rule of the Clerical Agreement, are hereby included under the rules of said agreement with such exceptions as are hereinafter set forth * * *

"OFFICE OF STATION AGENTS (Freight)

"Chief Clerk,

St. Louis,
Kansas City,
Dallas,
Ft. Worth,
Waco,
Houston,
San Antonio,
Denison,
Wichita Falls."

The carrier insists that at the six stations here in question there was no Chief Clerk at the time this "Memoranda of Agreement" was executed; that for many years these positions which are in dispute at these stations were Assistant Agent positions and that the "Memoranda of Agreement" only applied to these stations in the event Chief Clerks were put on at these stations.

The organization, on the other hand, contends that when the agreements of 1920 and 1925 were signed the positions now designated by the carrier as Assistant Agents were then designed and recognized as Chief Clerks positions; that since 1920 the work of the positions has been practically the same; that many of the positions have been held during the entire period of time in question by the same men and that the men holding such positions have at all times been carried by the carrier on the clerks' seniority roster.

From an examination of the entire record, even though some of the evidence submitted is not as clear as it might be, we feel constrained to agree with the contention of the organization.

The language of the Memoranda Agreement itself is very persuasive that the parties intended to cover and were speaking of existing positions. The first paragraph of §2 of said agreement says, "The following positions which are now excluded * * * are hereby included." The parties would not, ordinarily, use such language in speaking of positions which might be created in the future.

It seems to be conceded that the very positions here in question were originally recognized by all parties as Chief Clerks' positions and it seems fairly clear that the work of said positions has been without any material change during the years in question. It is also conceded that the occupants of these positions are now, and have been at all times, carried on the clerks' seniority roster.

The carrier insists that for several years prior to the execution of the Memoranda Agreement it had carried these positions as Assistant Agents. The carrier attempts to prove this by certain payroll exhibits. On two of these exhibits, both dated September, 1942, the exhibits show that the title "Chief Clerk" had been first written in and then erased and the title "Assistant Agent" then written in as to these positions at Houston and San Antonio.

We believe that when the parties signed this Memoranda Agreement and agreed that the positions of Chief Clerk, theretofore excluded from the Scope Rule of the Clerks' Agreement, were to be ~~thereby~~ included under the rules of said agreement, they were speaking of the particular positions described in this claim, and not of positions which the Carrier might create at some future date. If that be true the carrier, of course, should not be permitted to avoid the effect of this agreement by designating the positions as positions of Assistant Agents, or by thereafter reclassifying the positions and placing them under the agreement of another organization.

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. 2329, DOCKET CL-2273

This Docket CL-2273 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 employees, including those employees 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 employees, 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, both by the individuals involved and 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 dates of April 15, 1943 and 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-2278, 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.

Contrary to the conclusions of the Opinion of Board in this Award the record shows that the many years existence of the Assistant Agent positions here involved was fully known to the Organization and that the General Chairman, when negotiating the Memorandum Agreement dated April 21, 1942, effective May 1, 1942, was fully aware it did not ~~thereby~~ require that any one or all of the positions designated as Assistant Agent be automatically reclassified and thereafter designated as Chief Clerk. This is clearly evidenced by the General Chairman's letter of July 8, 1942 to Carrier's Vice President and General Manager which letter appears as an exhibit in the record and reads:

"With reference to your letter of July 1, 1942, file 2559-N, which lists the names of employes covered by the agreement of May 1st, treating with positions that were formally carried on an excepted basis:—

In checking over the list, I do not find where the employes on the positions of Assistant Agent at the several points other than those set out are included.

If it is desire of the carrier to continue the employes at St. Louis, Kansas City, Dallas, Ft. Worth, Houston and San Antonio as Assistant Agents, then, of course, we must insist that all incidental clerical work be removed from the positions, and their work be confined to that, that would be performed by an agent.

I have been receiving complaint from our Local organizations to the effect that the positions are still performing exactly the same incidental work that they have been performing over our protest over a period of time; I have withheld making any complaint, however, to give the Carrier an opportunity to decide just what disposition it desires to make of those jobs in view of the work that they are now performing.

I shall appreciate your advice on the question at your earliest."

The Carrier definitely contended that throughout the period prior to the negotiation of the Memorandum of Agreement and thereafter these were Assistant Agent positions and the foregoing letter is evidence that the General Chairman recognized them as Assistant Agent positions and did not even demand that they be included in the list which became a part of the Memorandum of Agreement; he simply alleged that incidental clerical work was attached to the positions, which, he contended, could not be performed by an Agent. Hence the very opposite of conceded recognition of these positions as Chief Clerks' positions, in respect to the negotiation and execution of the Memorandum of Agreement and the period subsequent thereto, is presented by the record in this case.

Here, as in those preceding dockets, it was the obligation of the Division to admit and consider the evidence known to exist here, available through the presentation of the individuals occupying positions involved and endangered by possible support of the claim and also available from the submitted but rejected presentation from the Order of Railroad Telegraphers.

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