

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that Carrier violated the rules of the Clerks' Agreement, when, on May 6, 1938, it abolished position of Freight Clerk, Antioch, California, rate \$5.67 per day, and assigned the duties thereof to lower rated positions covered by the Clerks' Agreement and to employees not covered by that agreement; and,

(2) Claim that all employees involved in or affected by said violation of rules shall be compensated in full for monetary losses resulting therefrom over the period from May 6, 1938, to September 1, 1938.

EMPLOYES' STATEMENT OF FACTS: Prior to May 6, 1938, the station force at Antioch consisted of the following:

Agent	Unassigned	\$.99 per hour
Telegrapher	8:00 A. M. to 4:00 P. M.	.76 " "
Telegrapher	4:00 P. M. to 12:00 Mid.	.73 " "
Telegrapher	12:00 Mid. to 8:00 A. M.	.73 " "
Freight Clerk	12:00 Noon to 9:00 P. M.	5.67 per day
Trucker	7:00 A. M. to 4:00 P. M.	.53 per hour
Apprentice Operator	8:00 A. M. to 5:00 P. M.	60.00 per month

Freight Clerk's assignment included the following duties:

Work mail and baggage, trains 2 and 23	30"
Check cars in yard	1'15"
Make 88 and 89 reports	30"
Make 44 report	15"
Make demurrage report	20"
Make waybills	1'50"
Make two trips to paper mill and cannery for switching orders, pick up bills of lading, seal cars and make necessary records	1'20"
Make switch lists	20"
Make abstracts of freight received and forwarded and prepaid freight bills	1'40"
	<hr/> 8'00"

No employee of the Carrier has been shown to have suffered a monetary loss. The Carrier will compensate an employee who can be shown to have been entitled to a position that should have been established effective May 7, 1938 under the applicable rules of the Agreement effective December 1, 1929 and for whom a monetary loss can be proven.

The claim is neither for the establishment of any position of clerical worker nor the re-establishment of the position of General Clerk, but for reimbursement of monetary losses alleged to have been sustained by unidentified parties in un-named amounts. It is not claimed that the employee displaced from the General Clerk's position abolished effective May 7, 1938 sustained any monetary loss.

The claim is confined to the period May 7, 1938 to September 1, 1938. There was established at Antioch on September 2, 1938 a position of General Clerk.

POSITION OF CARRIER: The claim for monetary loss should be dismissed, in the light of the fact that the employees have rejected the Carrier's offer to comply with the applicable terms of the Agreement on the basis that there should have been established May 7, 1938, effective upon the abolishment of the General Clerk's position, a proper position under the terms of the Agreement, and an employee eligible therefor placed thereon, which is all that the provisions of the Agreement between the parties require. Moreover, because the employees have both declined and failed to name any party having rights under the Agreement to an appropriate position and, also, have failed to show that any employee having rights under the Agreement has sustained a monetary loss by reason of the Carrier's admitted failure to comply with the applicable rules of the Agreement, no valid Award calling for the payment of money can issue unless the employees for whose benefit it is made are specifically named. See Award 906. Any Award that issues should require that a claim for monetary payment must, in order to be enforced, show that the names of the parties for whom claim is filed were made known to the Carrier prior to the filing of the claim with the Board.

The Carrier has not been served with nor permitted to see a copy of the Employees' submission, consequently it is not informed with respect to the alleged facts, contentions or allegations which the Employees' ex parte submission may contain. The Carrier, therefore, has dealt only with those contentions and allegations presented to it by the Employees and such other matters as in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to present evidence in rebuttal of any allegations, facts, or contentions that may be made by the Employees in their ex parte submission or to any other submission which the Employees may make to your honorable Board in this case.

OPINION OF BOARD: From May 7 until September 1, 1938, carrier dispensed with position of Freight Clerk at Antioch, California. At the time of his release, the employee holding that position had a regular assignment of at least 6 hours and 40 minutes per day, all but 20 minutes of which is admitted by the carrier to have been properly classified as clerical work within the scope of the Agreement.

The carrier also admits that a Trucker, a lower rated employee covered by the agreement, was performing one hour of clerical work when the Freight Clerk was relieved; that 2 hours and 30 minutes additional clerical work was imposed upon the Trucker by reason of the release of the Freight Clerk; and that 30 minutes of the Freight Clerk's time was turned over to the Apprentice Operator, an employee without the agreement.

On the authority of Docket No. CL-2387, Award No. 2569, and for the reasons therein stated, it must be concluded that the carrier violated the agreement. It only remains for us to indicate our views as to the appropriate relief.

It is suggested by the carrier that the above clerical time, aggregating 4 hours per day, may be credited to the Trucker and he compensated therefor under Article II, Section 1 (a) of the Agreement. The petitioner says, however, that this would not afford a proper solution of the problem. Out attention is called to the following additional facts, which appear to be corroborated by the record. Truckers were not brought under the effective Agreement of December 1, 1929 until the execution of the Memorandum of July 27, 1933. Reading those two instruments together it is clear that clerical workers are in Class 1 and truckers in Class 3. By the terms of Article III, Section 2, of the Agreement seniority is restricted to the class to which the employe is assigned. It is urged on behalf of the petitioner that the foregoing facts compel the conclusion that the carrier further violated the agreement by conferring upon a Class 3 employe duties which belonged exclusively to a Class 1 employe, thereby destroying valuable seniority rights. From the above, the petitioner deduces that (1) having discontinued a clerical position with at least 6 hours and 20 minutes of admitted clerical duties, in violation of the agreement, the carrier is obliged to make the employe formerly holding that position whole; and (2) having conferred upon a Trucker four hours of clerical duties, it is also required to compensate him at the clerical contract rate applicable to such services. With these conclusions we agree. See (1) Award 2501; (2) Award 2354.

The problem with which we are here dealing is a practical one, involving the carrier in its relation to certain individual employes, whose identity, time and rates of pay can be readily ascertained from the carrier's records and the terms of the applicable agreements, as here construed. To make whole all such employes whose contract rights have been violated is the price which the carrier must pay.

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 the carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1944.