

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION  
Bruce Blake, Referee

**PARTIES TO DISPUTE:**

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

**SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier has violated and continues to violate the Clerks' Agreement.

(a) In permitting and requiring the Agent at Stockton, California, Freight Station, to perform the recognized duties of Clerks in the Freight Station, and

(b) That such service when required, be performed by employes covered by the Clerks' Agreement, and

(c) That L. J. Dulcich, Cashier's Clerk, be paid five (5) hours on over-time basis under provisions of Call Rule No. 21, at Cashier-Clerk's rate, \$6.94 per day, May 27, 1942.

**EMPLOYEES' STATEMENT OF FACTS:** On May 27, 1942, Mr. J. A. Tandrow, Agent at Stockton Freight Station, a position which does not come within the scope of Clerks' Agreement with the carrier, instructed that some 175 Government bills of lading and uncollected freight bills be brought into his office, and were thereafter personally prepared by him for reporting to the Auditor's Office. The time consumed by him in performance of this clerical work was approximately five (5) hours.

In explanation of what this work consists, we will state for the information of the Board that Government freight is shipped to various depots at Stockton and is accompanied by a Government bill of lading; after the freight is unloaded, the Government bill of lading is signed by the Transportation Officer (Government) in charge and is forwarded to the Agent of the railroad concerned. When the bill of lading is received by the Cashier at the freight station, it is matched up by incumbent of Cashier's Clerk position with the uncollected freight bill which has been held pending receipt of the bill of lading. In matching up the bill of lading with the freight bill, the method used is to check the bill of lading number against the bill of lading number shown on the freight bill; check the weights, the signature, bad order notations, etc. If everything checks correctly, the freight bill is pinned to the bill of lading and later entered on what is known as Form 840, and forwarded to the office of the Auditor of Freight Accounts to be handled through proper channels for collection by the railroad from the Government of revenue due for transportation of the freight.

Again, in Award 1418, the Board, speaking through Referee Bushnell, stated:

“Rule 1 of the agreement (Scope Rule) does not enumerate the kind of work to which the agreement applies, such as weighing in this instance, but only enumerates the type of employes covered by the agreement.

“Not all clerical work comes within Rule 2. Not all clerical work is performed by clerical and other employes. As said in Award No. 806, ‘There are few, if any, employes of a Carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties.’”

In Award 1554, the Board, speaking through Referee McHaney, stated:

“As said in a recent case, Award 1418:

‘Rule 1 of the agreement (Scope Rule) does not enumerate the kind of work to which the agreement applies, such as weighing in this instance, but only enumerates the type of employes covered by the agreement.

Not all clerical work comes within Rule 2. Not all clerical work is performed by clerical and other employes. As said in Award No. 806, “There are few, if any, employes of a Carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties.”’

See also Award 1484.

Agent Wright did not come under the Clerks' Agreement. It is said that he did not come under any agreement. However, it is our opinion that a part of his duties as agent consisted in billing freight. The fact that clerk Hannah also billed freight did not give him the exclusive right to do so, and we conclude that there has been no violation of the Clerks' Agreement.”

After due consideration is given the foregoing, the unreasonableness of the petitioner's position in this docket is immediately evident. The carrier has no desire to deprive employes covered by the current agreement of work that is rightfully theirs, and has not done so in the instant case; however, if the claim is sustained it will create a condition entirely impracticable and will in effect establish and impose upon the carrier a new rule not agreed to by the carrier. That the Board has been empowered to construe and enforce agreements but not to make new rules is a well established principle.

The carrier has reviewed Awards 572, 631, 1403 and 1404 of this Board, which were cited by petitioner's general chairman (Exhibit “C”). Without analyzing each of those cases separately, the carrier asserts that there is no parity between the factual situations in the said awards and the factual situation in the instant case, nor do the said awards establish any basis or principle upon which the claim could be justified or sustained.

#### CONCLUSION

The carrier asserts that the claim in this docket is entirely without merit and requests the Division to so decide.

**OPINION OF BOARD:** It is admitted that the Agent, who is not covered by the Clerks' Agreement, performed clerical work usually assigned to employes of the regular clerical force. That the work was not incidental to his position as Agent is clear—if not conceded. This Board has consistently

held that all clerical work must be assigned to and performed by employes, who are covered by the Clerks' Agreement, except in cases when it may be incidental to the position of an employe not covered by the agreement or in cases where the work is performed by Telegrapher-Clerks who also handle telegraphic communications.

The carrier argues that the claim cannot be allowed because no overtime was actually put in by the claimant; that the work was performed during regular hours and that claimant worked his regular assignment. It is a fair inference from the facts of record that, had the work in controversy been assigned to claimant or any other of the employes comprising the regular clerical force, either he or one of them would have been required to work overtime in order to get out other routine work. The carrier also urges that the claim should be disallowed for lack of a proper claimant. As we understand it, the argument is that the work in controversy might not have been assigned to claimant and he, consequently would not have been required to work overtime. We think it sufficiently clear that work of the character in controversy was usually assigned to the position that claimant was filling that day. The carrier could have required him to do the work. That it might have required someone else will not serve to defeat the claim. Claimant is entitled to maintain it. At this stage of the dispute it is of no concern to the carrier that the claim might have been maintained on behalf of another employe.

While the Agent spent five and one-half hours, over-all, in performing the work it is conceded that it could have been done in two and one-half hours by a regular clerk. The claim accordingly will be allowed on that basis under the provisions of the Call Rule—Rule 21.

**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 to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1944.