

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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. When effective August 20, 1944, it nominally abolished the position of Round House Clerk, rate \$8.56 per day, at Newport, Arkansas on the Southern District Superintendent's Seniority District and Roster and without conference, negotiations or agreement of the parties, removed certain parcels of the clerical work comprising a part of the ordinary, normal and regularly assigned duties thereof out from under the scope and operation of the Agreement and absorbed certain duties and work by the Round House Foreman and the Car Inspector, neither of whom hold seniority rights under the Clerks' Agreement, entitling them to perform same;
2. Transferred certain parcels of the clerical duties and work which comprised a part of the regular assignment of the Round House Clerk at Newport, Arkansas, from the Southern District Superintendent's Clerical Seniority District and Roster to the Arkansas Division Clerks Station and Yards Seniority District and Roster and absorbed same with a Yard Clerk listed thereon who holds no seniority rights on the Southern District Superintendent's Clerks Seniority Roster entitling him to perform said work which was accomplished without conference, negotiation or agreement of the parties;
3. That the clerical work comprising that part of the assigned and regular duties of the Round House Clerk at Newport, Arkansas, prior to August 20, 1944, that was removed out from under the Clerks' Agreement and absorbed by the Round House Foreman and by the Car Inspector shall be restored to the scope of the Agreement and assigned to Southern District Superintendent's District and Roster, Clerks, from which it was removed in violation of the Agreement.
4. That the clerical work comprising that part of the assigned regular duties of the Round House Clerk at Newport, Arkansas,

It is noted in the Employees' statement of claim presented to your Honorable Board that they cited no rule of the agreement between the Carrier and the Clerks' Organization dated July 1, 1943 to support their claim. It is likewise notable that the Employees in their presentation of this claim to the Management cited no rule of this agreement to support their claim. The Management feels that this claim, which has been presented to your Honorable Board, is lacking in merit as well as the support of a rule in the working agreement between the Organization and the Carrier to permit of your Honorable Board sustaining the Organization's contention that the Carrier establish a clerk's position in the foreman's office at Newport and pay him a day's pay (8 hours) to perform not to exceed 2 hrs. 15 min. clerical work per day that is being performed practically 100% by clerical workers, except such reports that are made by the foreman on matters in which he is directly concerned in his position of a roundhouse foreman.

OPINION OF BOARD: On August 20, 1944, the Carrier abolished the position of Round House Clerk at Newport, Arkansas, a position within the Southern District Superintendent's Employees' Seniority District. The Organization contends that the remaining duties of the abolished position were improperly assigned in part to two positions outside the scope of the Clerks' Agreement and in part to a position outside the seniority district to which it belonged.

The abolished position was established on December 9, 1942, as a new position. Its establishment was made necessary because of the construction of a military air training base near Newport and a large increase in business at that point as a result thereof. When the activities of the base were largely discontinued and the Carrier's business at Newport approached a normal condition, the position of Round House Clerk was abolished. The remaining work of the position was assigned to the Round House Foreman, a Lead Car Inspector and a Yard Clerk holding seniority on the Arkansas Division Clerks Station and Yards Seniority District only. It is the contention of the Organization that the clerical work remaining after the abolishment of the position of Round House Clerk cannot properly be so distributed.

The Carrier clearly had the right to reduce its forces by abolishing positions provided it did so in accordance with the provisions of the controlling agreement. It is well settled as a general proposition that a carrier may not remove work from the scope of one agreement which belongs to the employees under that agreement. Award 3003. A recognized exception to that rule is that clerical work may be performed by employees without the scope of the Clerks' Agreement where it is incidental to the work of their positions. This rule was stated by this Division in a case similar on its facts to the one before us in the following language:

"It is urged that as the work was once performed by clerks that it cannot be taken from them except by negotiation. This Division has not adopted this view. A review of Awards 931 and 1694, among others, leads to the conclusion that if the clerical work of a foreman becomes too great for him to perform it, it may be assigned only to a clerk, and when the amount of clerical work abates so that the foreman can perform it himself, it can be turned back to him without violating the Clerks' Agreement." Award 2334.

We are of the opinion, therefore, that the Carrier could properly assign such clerical duties formerly belonging to the abolished Round House Clerk position to the Round House Foreman as were incidental to that position and no more. Consequently, the assignment of such duties of the Round House Clerk position to the Round House Foreman is not in violation of the Agreement. The same rule applies as to the Lead Car Inspector in the present case.

With reference to the Carrier's action in assigning a part of the work formerly performed by the occupant of the abolished position to a Yard Clerk in another seniority district, we think the Agreement was violated. By a long line of awards of this Division, it has been held that a carrier in discontinuing a position cannot properly assign it to employees covered by the agreement if they hold seniority rights exclusively in another seniority district. Awards

1685, 2050, 2354 and 2382. Such a result can be accomplished only by agreement. It is urged that the work assigned to the Yard Clerk was formerly performed by clerks holding seniority in the Arkansas District and that its assignment to a Clerk in that district merely places the work where it belongs. We cannot subscribe to this view. By removing the work from the Arkansas District and assigning it to an employe holding seniority in the Southern District, no objection thereto having been made and the employes in the Arkansas District having apparently acquiesced thereto, the work belongs to the employes holding seniority in the Southern District from whom it can be taken only by negotiation.

We conclude that the Carrier could properly abolish the position of Round House Clerk, that the return of the remaining work of that position to the Round House Foreman and the Lead Car Inspector which was incidental to those positions was entirely proper, and that all remaining work of the abolished position which was assigned to the Yard Clerk in the Arkansas Seniority District constituted a violation of the Agreement.

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 Agreement was violated to the extent shown by the Opinion.

AWARD

Claims 1 and 3 denied. Claims 2, 4, 5 and 6 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1946.