

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that all clerical and related work incident to the Interchange of cars from Western Pacific to Santa Fe at Stockton, California, is work embraced within the scope and operation of the Clerks' Agreement and that the unilateral action of the Carrier in assigning this specified work to other than employees holding seniority rights under the Clerks' Agreement constitutes a violation of that agreement.

EMPLOYES' STATEMENT OF FACTS: Prior to December 1, 1941 all clerical work incident to Interchange of cars between the Western Pacific and the Santa Fe at Stockton was performed by employees holding seniority rights under the Clerks' Agreement. In effecting interchanging of cars, the work involved consists of making up an Interchange Report by Carrier, making delivery of cars, and making a check by Carrier receiving cars. Thus, in interchanging cars between Western Pacific and Santa Fe at Stockton, the clerical and related work accruing to employees holding seniority rights on the Western Pacific consisted of making up Interchange Reports on cars being delivered to Santa Fe and making check of cuts of cars received from Santa Fe.

Prior to December 1, 1941 this work was assigned to and performed around the clock by employees holding seniority rights under the Clerks' Agreement.

Effective December 1, 1941 and without conference and agreement, Carrier removed from the scope and operation of the Clerks' Agreement the above specified clerical and related work incident to the operation of this facility between the hours 12:01 A. M. and 4:00 P. M.; assigning the same to employees holding no seniority rights under the Clerks' Agreement. The described work accruing on the 4:00 P. M. to 12:00 Midnight shift was properly assigned.

POSITION OF EMPLOYES

There is in evidence an agreement bearing effective date of October 1, 1930 from which the following rules are cited:

"Section 13. In the event that any dispute or controversy arises (except as defined in Section 11) in connection with a particular coordination, including an interpretation, application or enforcement of any of the provisions of this agreement (or of the agreement entered into between the carriers and the representatives of the employees relating to said coordination as contemplated by this agreement) which is not composed by the parties thereto within thirty days after same arises, it may be referred by either party for consideration and determination to a Committee which is hereby established, composed in the first instance of the signatories to this agreement. Each party to this agreement may name such persons from time to time as each party desires to serve on such Committee as its representatives in substitution for such original members. Should the Committee be unable to agree, it shall select a neutral referee, and in the event it is unable to agree within 10 days upon the selection of said referee, then the members on either side may request the National Mediation Board to appoint a referee. The case shall again be considered by the Committee and the referee and the decision of the referee shall be final and conclusive. The salary and expenses of the referee shall be borne equally by the parties to the proceedings; all other expenses shall be paid by the party incurring them."

Carrier contends that the interests of its clerical employes were fully protected and improved during the period the clerical work incident to the interchange was performed in the interchange office, and that the handling did not violate any provisions of the Clerks' Schedule.

This claim has been handled on the property in accordance with the terms of the Railway Labor Act, without satisfactory settlement.

OPINION OF BOARD: This is a claim for violation of the Agreement between the Organization and the Carrier by assigning work, covered by the Scope Rule, to persons holding no seniority rights under the Agreement.

Notice of intention of the Organization to file an ex parte submission of the claim was served on this Board under date of April 16, 1946.

It appears from the record that the facts giving rise to the dispute ceased to exist in February 1946.

It is clear, therefore, that the claim was moot before the jurisdiction of this Board was invoked. The Organization, nevertheless, urges the Board to accept jurisdiction as an application for interpretation of the Agreement. In support of its position, the Organization cites Award No. 2670. That was a case where the Carrier asked this Board to construe certain provisions of the agreement as applied to certain situations. The Board, of course, has jurisdiction under The Railway Labor Act to take jurisdiction of such applications.

This, however, is no such application. It is a claim based upon an alleged violation of the Agreement. The facts upon which violation of the Agreement is predicated having ceased to exist before the jurisdiction of this Board was invoked, the dispute is moot and should be dismissed. See Award 619.

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 Employees involved in this dispute are respectively carrier and employees 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 dispute is moot.

Claim dismissed.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of January, 1947.