

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Clerks' Agreement when during the period from September 9 to 17, 1946, it turned over to Traveling Auditors work regularly performed by Distribution Clerks in the District Accounting Office at Tacoma, Washington.

(2) Carrier be required to compensate Messrs. E. J. Demmer, M. F. Galbraith, C. C. Carlin and B. A. Weber, regularly assigned Distribution Clerks with hours from 8 A.M. to 5 P.M., at time and one-half the rate of \$9.63 per day for a total of 118 hours' clerical work performed by the Traveling Auditors.

EMPLOYEES' STATEMENT OF FACTS: On September 9, 1946 Traveling Auditors J. Montgomerie and J. G. Rea were assigned work ordinarily performed by Distribution Clerks in the Western District Accounting Office at Tacoma, Washington. The work consisted of making up distribution of department invoices covering deficit pertaining to the Industrial Food Crafts, Inc. for the period January to June, 1946, inclusive. Assignment of this work to the Traveling Auditors from September 9 to 17, 1946, inclusive, deprived the regularly assigned Distribution Clerks of a total of 118 hours' overtime which would have been necessary to perform the work.

The circumstances resulting in this work being removed from the Clerks' Agreement and assigned to Traveling Auditors Montgomerie and Rea is best described in Mr. H. L. Scholes' reply to Distribution Clerk Galbraith, and for the information of your Honorable Board copies of these letters are attached and identified as Employees' Exhibits "A" and "B."

CARRIER'S STATEMENT OF FACTS: J. G. Rea and J. Montgomerie occupy position of Traveling Auditors.

M. J. Galbraith, C. C. Carlin, E. J. Demmer and B. A. Weber occupy positions of Distribution Clerks in the Western District Accounting Office, Tacoma, Washington, and are assigned to work from 8:00 A.M. to 5:00 P.M., with one hour for lunch and with Sunday as their assigned rest day.

Positions of Traveling Auditors and positions of Distribution Clerks come within the scope of the current agreement effective June 1, 1946, with

limitation that paragraph is applicable. There are no rules contained in the current Northern Pacific Clerks' Agreement that limit the work that may be performed by positions covered by Rule 1 (c).

The grouping under Rule 1 (a) sets out the employees covered by the scope rule of the agreement. There are three general groups. Group 1 (a) covers positions that heretofore were not included within the Clerks' Agreement. Group 1 (b) covers clerical employees who were included in the previous agreement. Groups 2 and 3 cover other than clerical employees who were included in the previous agreement. The note under Rule 1 (a) was designed to make it perfectly clear that the grouping of employees did not set up a limitation of work to be performed by employees covered by the agreement, subject to the application of specific rules to the contrary. For example, a clerk covered by Group 1 (b) may perform work on a position other than his own and when this is done the provisions of Rule 52 are applicable. Likewise, an employee covered by Group 2 or Group 3 may perform work on positions covered by other groups subject to the application of certain rules. The conditions under which employees covered by the agreement may perform work under that agreement and any limitations on the performance of such work are definitely and specifically spelled out.

It would not be reasonable to say that the Carrier and the Employees brought within the scope of the agreement at the Employees' request that certain positions not theretofore included within the agreement but performing work covered thereby and in so doing agreed that only certain rules would be applicable to such positions, and entirely overlook the matter of work to be performed by those positions. The fact that only certain rules apply to positions covered by Rule 1 (c) shows that the parties carefully analyzed the entire agreement. During the negotiation of that agreement and particularly the Employees' request for inclusion of certain positions therein, they at no time advanced even a suggestion that there be a limitation on the work that would be performed by such positions. They were desirous of having those positions included within the scope of the agreement and they agreed to the conditions under which they would be included. Those conditions do not include any limitation on the work that may be performed by such positions. The Employees may not now modify the provisions of the agreement by saying they had some mental reservations when the agreement was negotiated and executed. The agreement must be interpreted as written. The agreement as written can leave no doubt there is no basis for the Employees' claim. It is not the province of this Board to change or modify existing agreements. This is in substance what the Employees are asking you to do.

The Carrier and the Employees in the negotiation and execution of the current Clerks' Schedule have agreed that the positions of Traveling Auditors are included within the scope of that agreement; they have agreed that only certain rules will be applicable to such positions; they have not agreed upon any rule or limitation on the work that may be performed by such positions. It logically follows that in the absence of a rule of limitation, there is no ground upon which the Employees can base the instant claim.

Without in any way conceding that there is any foundation for this claim, the Carrier directs attention to the fact that the total time spent by the two Traveling Auditors in the entire work of devising a method of handling accounting and adjustments under the boarding contract and bringing this work up-to-date so that it could be turned over to the Distribution Section on a current basis was 118 hours; that each of the claimants in this case is contending for payment of 118 hours at overtime rate.

For the reasons hereinabove set forth, the Carrier respectfully submits that this claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are regularly assigned Distribution Clerks in the Western District Accounting Office at Tacoma. They claim

that work regularly performed by them was improperly turned over to Traveling Auditors and seek payment for the 118 hours the Auditors spent at the work. While this case is jointly submitted it has a sharply disputed issue of fact.

Carrier made a contract with Industrial Food-Crafts, Inc., for the operation of boarding camps commencing January 1, 1946. This was the first contract with this company. The contract called for monthly advances and for monthly final accountings and adjustments. Monthly advances were made by Carrier but five months went by with no accountings and no adjustments. Carrier states that some of this delay was because the employees were not familiar with the method of setting up the adjustments as required by the contract. Thereupon, arrangements were made for Traveling Auditors to set up such a plan and in doing so they computed the adjustments. Thereafter the work of making the monthly accountings and adjustments was assigned to the Distribution Section. Carrier claims that setting up accounting methods is work ordinarily and customarily done by Auditors.

Claimants submit a statement of one of the Clerks which in effect denies that they indicated they were not familiar with the required procedure when requested to do the work but they meant only that since a new contract was involved they were not familiar with it at that time, and they did not then have the time to read and study the contract when it was turned over to the Traveling Auditors.

In presenting this claim to the Board Claimants now contend they had done the same type of work under a previous contract with a different company. Hence their own evidence appears to be conflicting as to their familiarity with the required procedure.

Claimants first contend the work was removed from the Clerks' Agreement. We do not find such to be the case. By the current agreement effective June 1, 1946, Traveling Auditors for the first time were expressly included within the scope rule along with the Distribution Clerks. This was a change from the old agreement in which the Traveling Auditors were not included in the scope rule.

Accordingly the numerous awards which hold that work cannot be removed from the scope of the agreement are not controlling here. Likewise the awards holding it is improper to assign work within the agreement to employees excepted from the scope thereof are not pertinent since the Auditors are now named in the scope rule.

After setting out the positions included within the scope rule, Rule 1 (c) qualifies the Agreement in its application to Traveling Auditors, and some others, by making only some of the rules of the Agreement applicable to them, thereby excepting them from the balance of the rules including the "money rules." Despite this restriction the fact remains that Traveling Auditors are expressly included within the scope rule. Award 3396 is not apposite here because of differences in facts and the rules involved. There Carrier abolished a position and assigned its work to a semi-accepted position and this Board held that such action violated the rule prohibiting discontinuing established positions and creating new ones to evade the rules of the Agreement.

Under Rule 7 Traveling Auditors retain their seniority rights in their respective districts from which they come. In this case none had seniority in the district where they did this work. Claimants contend this violates the principle that work can not be taken out of one district and put in another. See Award 973. However, in Award 1808 the Board ruled that a carrier may not assign work to those holding "seniority rights **exclusively** in another seniority district" and cited a number of awards in support of such rule. Since Traveling Auditors do retain their seniority rights in the districts from which they come, the application of such a rule to them would restrict their work to the limits of such district which surely was not the intention of the parties.

Since we find no rule of the Agreement or any established practice thereunder which sustains Claimants' contention under the facts of this case, it follows that the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1948.