

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**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(1) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, violated and continues to violate its several agreements with the organization, when on September 14, 1943, after due notice, it failed and refused to assign to positions covered by the said agreements, incidental clerical work then and now performed at Atoka, Oklahoma, by employees working outside the scope of the clerical agreement; and,

(2) That the carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) refused and continues to refuse to classify and restore the work to the scope and operation of the clerical agreement; and,

(3) That the carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) shall now be required by an appropriate award and order of the Board to create and maintain appropriate positions under the clerical agreement and assign to the said positions and restore to the scope and operation of all the agreements and rules extant between the respective parties, all of the incidental clerical work, as set forth in the Statement of Fact, there to remain until removed therefrom by the proper processes set forth in the agreement (Rule 78) and the Railway Labor Act—1934—amended; and

(4) That the said positions shall be advertised and assigned under the appropriate rules of the agreement as of September 14, 1943, and that any and all employees adversely affected by the illegal and unlawful act of the carrier in assigning the said work and duties to the positions and or persons not covered by the clerical agreement, shall be reimbursed for all their money losses.

EMPLOYES' STATEMENT OF FACT: Under the terms of Addendum No. 2 of the agreement the following positions were in existence at Atoka:

Chairman Pickett again conceded the right of telegraph employes to perform clerical work and the correctness of Award 615 in agreeing to joint check of work at Wichita Falls involved in Award 1551. And, Grand President George M. Harrison conceded the right of the telegraphers to perform clerical work when he requested withdrawal of Dockets CL-2751 and CL-2752, and secured Awards 2650 and 2651. This Board, in Award 2597, found the telegraphers on this carrier had the right to perform clerical work without violation of the Clerks agreement. (See Awards 2597 and 2596, Carrier's exhibits "E" and "H".)

All of which facts support the Carrier's sixth proposition that no cause of action has been stated by the organization in this case when he attempts to premise his action on an alleged violation of the Clerical agreement, and the carrier accordingly requests denial of the claim.

As to the Carrier's seventh proposition that this matter has not been handled on the property as required by Section 3 (i), the carrier will state it was quite surprised to receive Grand President George M. Harrison's letter of March 17, 1947, attempting to refile this action, as no discussion of this case had been had with the organization on the property, for which reason the case should be denied.

As to the Carrier's eighth proposition that inasmuch as the National Railroad Adjustment Board, by Order of the Third Division, has found in Award 2597, that:

"To sustain the claim would, of course, deprive the Telegraphers' organization and its members of most substantial and valuable rights—rights accorded by this very Board in its Decision in Award No. 615."

they found as a fact that the telegraphers were entitled to perform clerical work on this carrier without violating the Clerical agreement. Having found this fact, no other award could have been made in denying the employe's claim in Award 2597, which case is binding precedent for a similar award in this case. The statement of the proposition is so clear it needs no supporting explanation or argument. Accordingly the carrier requests the matter which has already been concluded by a final and binding award, not again be opened, but, if reopened, that an award for the carrier denying the claim be made.

The Clerks lost nothing by Award 2597, as they sought a right they never had, and which had time and again been expressly denied them. The Agents and telegrapher-clerks gained nothing as they retained only what they had always possessed and enjoyed.

The carrier by reference incorporates herein and makes a part hereof its exhibit "D", the original submission in Award 2650 covering this identical case, together with all its exhibits, defenses, and arguments therein contained.

The carrier hereby incorporates in and makes a part hereof Award 2597 (exhibit "E") and pertinent parts of Award 2596 (exhibit "H") and all defenses which may grow out of or arise from said awards.

Except as expressly admitted herein, the Carrier denies each and every, all and singular the allegations contained in all of the organization's and employes' submissions of any kind or character submitted, or to be submitted in Docket CL-2751, Award 2650, or in this action, and respectfully requests that the Petitioner be placed on strict proof of any and all allegations contained in said submissions.

(Exhibits not reproduced.)

OPINION OF BOARD: This is one of three companion claims between the same parties and involving the same question namely, whether Carrier has improperly assigned work comprehended by the Clerks' Agreement to employes covered by the Telegraphers' Agreement. The same contentions both in support of and against the claim, which seeks to restore such work to the Clerks, are discussed and decided in the two companion claims in

Awards No. 3932 and No. 3933. Those awards govern this claim and are by this reference incorporated herein as deciding such contentions, and as ruling this claim.

Like CL-3715, Award No. 3933, this claim was previously filed with the Board on May 29, 1944, was later withdrawn without a hearing upon Petitioner's request, and was dismissed under Award 2650 which ordered "Case Dismissed". As we ruled in the companion claim such dismissal was not one "on the merits" or "with prejudice" so does not in anyway affect or bar Petitioner's right to refile the same claim as it did here on March 19, 1947.

In this claim Petitioner shows that at Atoka, Oklahoma Station there were three clerical positions listed under Addenda No. 2, effective December 16, 1923. Under succeeding revisions we find five under Addenda No. 3, four under Addenda No. 4, and two under Addendum No. 5. Thereafter there was another clerk's position created increasing the number to three but there were also three positions at this station covered by the Telegraphers' Agreement performing about 12½ hours clerical work daily. The facts do not appear to be in dispute. The claim seeks to have Carrier create appropriate positions under the Clerks' Agreement and to assign this work to such positions.

On the basis of our rulings in Awards No. 3932 and No. 3933, items 1, 2, and 3 of the claim must be sustained; and item 4, for penalties retroactive to September 14, 1943, will 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 has violated the Agreement.

AWARD

Claim 1, 2, and 3 sustained.

Claim 4 denied as to compensation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of June, 1948.

DISSENT TO AWARD 3932, DOCKET CL-3714
DISSENT TO AWARD 3933, DOCKET CL-3715
DISSENT TO AWARD 3934, DOCKET CL-3716

This opinion and award disregard the clear intent and purpose of the Agreements in effect, and the practices and customs of long standing under said Agreements. Practical consideration of the record in that respect will point out the error of this award. As reliance is placed on Award 2071, attention is directed to dissent to that award and by reference thereto is made a part of this dissent.

/s/ A. H. Jones
/s/ C. C. Cook
/s/ R. F. Ray
/s/ R. H. Allison
/s/ C. P. Dugan