

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 it removed the clerical work at Benton, Arkansas, consisting of:

Checking freight and handling freight to and from the contract drayman during the period Clerk A. H. White was off duty on his meal period on October 1, 8, 9, 10, 14, 16 and 21, 1947;

2. Clerk A. H. White shall be compensated on the actual minute basis at the rate of time and one-half time:

October 1, 1947, 30 minutes at punitive rate of \$1.69 per hour	.84
October 8, 1947, 15 minutes at punitive rate of \$1.69 per hour	.42
October 9, 1947, 45 minutes at punitive rate of \$1.69 per hour	1.27
October 10, 1947, 45 minutes at punitive rate of \$1.69 per hour	1.27
October 14, 1947, 30 minutes at punitive rate of \$1.69 per hour	.84
October 16, 1947, 30 minutes at punitive rate of \$1.69 per hour	.84
October 21, 1947, 30 minutes at punitive rate of \$1.69 per hour	.84

Total \$6.32

which claims shall continue on each date subsequent to October 21, 1947, that these violations of Agreement occur until the provisions of the Agreement are complied with by the Carrier and the claims satisfied.

EMPLOYES' STATEMENT OF FACTS: The clerical force at Benton, Arkansas, subject to the scope and operation of the Clerks' Agreement has varied through the years.

On the effective date of Mediation Wage Settlement, Mediation Case C-337 on the Missouri Pacific Railroad, November 1, 1928, such force at Benton consisted of:

Cashier	\$5.39 per day
Ticket Clerk	4.89 per day
Bill Clerk	4.89 per day
Yard Clerk	4.39 per day
Baggagemen (2)	3.16 per day

"The checking, receiving, delivering and handling of freight or other shipments for railroad purposes, either inbound or outbound at the Railroad's warehouses, is work properly belonging to and will be performed by the Railroad's station forces."

POSITION OF CARRIER: It is the position of the Carrier that there is nothing in the agreement with the Clerks' Organization that prohibits an agent from performing his duties as an agent. The making of records incidental to the operation of the station and the handling of less than carload freight have always been considered as being among the duties of an agent, and that is as it should be. In addition to the foregoing, there is specific provision made in the Memorandum of Agreement (Carrier's Exhibit A) dealing with the checking, receiving, delivering and handling of freight or other shipments for railroad purposes, either inbound or outbound at the railroad's warehouses, and that agreement points out that it is work properly belonging to and will be performed by the railroad's station forces.

The contention of the Employees that the agent at Benton is a supervisory agent and can perform no work at the station, merely because he was relieved of the duties of telegraphing, is not sound because the agent at Benton was in charge of the station when he performed telegraph service just the same as he is today in charge of the station. When he was performing the duties of telegraphing, incidental to his other work as agent, he did perform certain clerical work, and today he performs certain clerical work. His status was not changed other than that he was relieved of telegraphing. Benton, Arkansas is a small station and there is no necessity for what is generally referred to as an exclusive supervisory agent, i. e., an agent at a large station, where a large force is employed, and the agent's time is taken up in the supervising and directing of work of others.

When the rearrangement of the hours of the station forces was made effective on August 1, 1947, there was no change made in the total number of clerical employees or in the total number of employees covered by the Telegraphers' Agreement. There were three employees coming under the scope of the Clerks' Agreement and two coming under the scope of the Telegraphers' Agreement, and after the rearrangement of the hours there were still three employees at Benton coming under the scope of the Clerks' Agreement and two coming under the scope of the Telegraphers' Agreement.

Decision No. CL-109 (Carrier's Exhibit A) provide only that checking, receiving, delivering and handling of freight or other shipments for railroad purposes at the railroad's warehouse is work belonging to and that will be performed by the railroad's station forces and not to any particular craft or class among those employees included in the station forces. The station forces, as commonly referred to in railroad parlance, include both clerks and telegraphers. See Carrier's Exhibit B, "Comparative Statement of Business Handled Showing Hours of Service and Work Performed by Office and Warehouse Force" and note the caption heading the second largest section of that report, "Station Force".

The agent at Benton is a member of the station force at that station. The Memorandum of Agreement referred to as Decision No. CL-109 (Carrier's Exhibit A) is so specific in the matter of handling less than carload freight at the railroad's warehouse that there is absolutely no justification for the organization's position in progressing the claim of Yard Clerk A. H. White. The agreement was so worded so that there would not be any dispute concerning the matter when any member of the station force, be the person an agent, an agent-telegrapher, a telegrapher-clerk or any other clerk checked, received, delivered or handled freight at one of the railroad's warehouses.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a Yard Clerk employed at Benton, Arkansas, with assigned hours 3:30 A. M. to 12:30 P. M. with a one-hour meal period, 7:50 A. M. to 8:50 A. M. Two other clerks are employed at this

point but neither are assigned to work during claimant's meal period. In addition to the three clerical employees, there is an agent and an operator clerk employed. The agent is a monthly rated employee. Prior to August 1, 1947, the agent did telegrapher's work but due to a rearrangement of the work at that time he no longer performed any such work. The present claim arises out of the fact that the agent performed the work of checking and handling freight while claimant was off-duty during his meal period.

It will be noted that Benton station was not a one-man station. It had several classes of employees among its station forces. The checking and handling of freight is clerical work and was performed by claimant, a Yard Clerk. The agent was not an employee within the scope of the Clerks' Agreement. Carrier contends, however, that as agent he was entitled to do this work. In substantiation of this contention, the Carrier points out that the Memorandum of Agreement dated July 8, 1942 states:

"The checking, receiving, delivering and handling of freight or other shipments for railroad purposes, either inbound or outbound at the Railroad's warehouses, is work properly belonging to and will be performed by the Railroad's station forces." Rule 2, Memorandum Agreement, dated July 8, 1942.

This is a provision of an Agreement made with the Clerks' Organization and deals only with work which belongs to Clerks. It clearly means when it mentions "station forces" the station forces within the Clerks' Agreement. If this meaning is not ascribed to it, it would be of little or no value to the Clerks and have little reason, if any, for it to be incorporated in the Clerks' Agreement. We think this holding is supported by Rule 1(a) of the same Agreement wherein the checking, handling and trucking of freight into and out of warehouses in stations where classes of employees are employed, is given to the Clerks, except as therein otherwise specifically provided.

We conclude that the work in question belonged to the Clerks. The agent was not within the Clerks' Agreement. The performance of the work by the agent was a removal of the work from the scope of the Clerks' Agreement. It is, therefore, a violation of the Agreement to permit the agent to perform the work in question in the type of station here involved. An affirmative award is required. Awards 2071, 2074, 3222. It will be sustained for the pro rata rate of claimant's position Award 4196.

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 Agreement was violated.

AWARD

Claim (1) sustained. Claim (2) sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago Illinois, this 3rd day of December, 1948.