

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier did not properly apply rules of working conditions agreement between the Brotherhood and the Carrier, effective September 1, 1942, particularly Rule 2 thereof, in that they did not properly classify and affix thereto an appropriate rate of pay to position occupied by L. B. Stoddard, payroll classification, Station Helper at Estherville, Iowa, and;

1. That Carrier shall now be required to change the payroll classification of the position occupied by Mr. Stoddard from Station Helper to Clerk, and;

2. That Mr. Stoddard be paid the difference between what he was paid for the services performed under the classification of Station Helper, i. e., 46¢ per hour (\$3.68 per day) and the minimum rate established by agreement for clerical workers, viz., \$5.11 per day retroactive to January 1, 1943, plus wage increases added to these respective classifications under national wage increase agreements to which the Carrier and Employees were parties, effective February 1, 1943, December 27, 1943, January 1, 1946, May 22, 1946, and September 1, 1947.

EMPLOYEES' STATEMENT OF FACTS: There is employed at the Estherville Station:

- 1 Agent—assigned hours of service—8 A. M. to 5 P. M.
- 1 Station Helper—assigned hours of service—9 A. M. to 6 P. M.

At the time this case arose, claimant, Mr. Stoddard, was regularly required to perform the following work:

- Take care of all out-bound billing and abstracting
- Compile switching settlement statement
- Handle perishable inspection reports
- Handle drayage on freight pick-up and delivery reports
- Check freight both in and out-bound from train to station to consignee
- Handle all L.C.L. rating
- Handle interchange between the M. & St. L. Ry. Station and the C.R.I.P. Station
- Handle matters pertaining to bad orders

all of which is clerical work at the station requiring the services of a clerical worker in excess of four hours per day.

since Carrier has been advised that the claim is being submitted ex parte by the President of the Organization, instead of jointly by the Clerks' Committee and the Carrier, as requested by the General Chairman and agreed to by the Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant herein is and for a long period of time has been employed as a Station Helper at Estherville, Iowa. Employees assert that he has been working in excess of four hours per day on clerical work. The claim has a rather long history which is detailed in the submissions of the Employees and the Carrier. Further detailing of it here is, in our opinion, unnecessary.

It appears from the record that on November 19, 1946, Carrier's Assistant Superintendent and Employees' General Chairman made a joint check which developed that on that day the employe performed one hour and forty minutes of work which was undeniably clerical in nature and spent one and one-half hours per day alone at the Station while the Agent made inspection and collected freight charges and spent two and one-half hours per day in receiving and delivering freight. This check was made pursuant to an understanding reached at a conference on October 24, 1946, and as outlined in a letter of the Carrier to the General Chairman, was to determine the amount of clerical work then being performed each day by Helper Stoddard, and to determine, if possible, the amount of time put in by Mr. Stoddard in the past. November 25, 1946, after the completion of the report on the joint check, the General Chairman wrote Carrier's Personnel Officer and asked if he had come to a decision on the question. On December 23, 1946, Carrier's Personnel Officer responded and said that the joint check revealed that less than four hours a day could be classed as clerical work and went on further to state: "It is our position that the 2'30" daily work performed by Mr. Stoddard in receiving and delivering freight cannot properly be classed as clerical work". It is to be noted that at that time no mention was made of the one and one-half hours' time spent in charge of the Station during the Agent's absence. That letter further indicated that in conference the General Chairman had stated that there were some Awards of the Third Division defining the receiving and delivery of freight as clerical work and that he (the General Chairman) would endeavor to locate those Awards and advise. March 4, 1947, the General Chairman wrote the Personnel Officer and referred to Awards which he claimed supported his assertion. After a lapse of some months, on August 13, 1947, during which other correspondence was exchanged including two letters from the General Chairman requesting a decision, the Carrier's Personnel Officer replied, stating that inasmuch as the joint check performed at Estherville was only a one-day check, it was felt that it was not representative of the clerical work performed by Mr. Stoddard and they would therefore like to make a joint check of at least three days. This was declined by the General Chairman and in view of such declination, on November 19, 1947, Carrier denied the claim.

It is difficult to comprehend why the Carrier after having had the joint check for study for well over eight months and exchanging correspondence thereon and meeting in conference to discuss the claim on the basis thereof should then request another joint check and take the position before this Board that an Award should not be made in this docket without a further joint check. If Carrier had reason to doubt the representative nature or authenticity of the joint check, it would seem reasonable to presume that they would have questioned it during the eight month period that conferences were held and correspondence exchanged in connection therewith. We conclude, in view of these facts, that the joint check affords a basis for this Board to proceed to a disposition of the claim.

With respect to work performed by the Claimant during "the one and one-half hours alone at the station", it is asserted by Employees that Mr. Stoddard represented the Agent in the handling of all Agency work except telegraphing and that it was therefore clerical work. When we consider that assertion plus the fact Carrier had not questioned this time as being spent in

"clerical work" in the lengthy correspondence over the joint check, we believe that we are justified in concluding that that time should unquestionably be added to the one hour and forty minutes already conceded by the Carrier as having been spent in clerical work, making the aggregate three hours and ten minutes without counting the time spent in "Receiving and Delivering Freight".

With respect to determining whether or not the work of receiving and delivering freight should be considered clerical work, we believe that this Board must take cognizance of the fact that some substantial clerical work is involved in that type of operation. In fact, on many carriers, a clerical classification of delivery clerk is in existence indicating in some respects that the work is essentially clerical and such clerks, although in the performance of their duties they may manually handle freight, are paid at a higher rate of pay than those who are more or less restricted to just the manual handling, such as truckers. (See Award 1845, particularly Carrier's position.) We do not think that in deciding this question we should be required to split hairs and try to determine how much time is spent in tallying and looking at tags on the freight and how much time is spent in moving freight manually until the tally sheet or record book is again picked up. Certainly we believe that in two and one-half hours of work by this Claimant in connection with the receipt and delivery of freight it is reasonable to conclude that at least fifty-five minutes of his time was spent in clerical work and that plus the three hours, ten minutes indicated in the previous paragraph is sufficient to establish that Claimant should have been paid at the minimum rate for clerical employees under the Agreement.

With respect to the effective date of payment at the increased rate, inasmuch as the record reveals that Claimant has been employed at this Station since 1933, and that at times during 1945 some clerical work was taken from the position and we do not have substantial evidence in the record to determine whether or not Claimant was regularly required to perform in excess of four hours of clerical work during the years prior to 1946, we feel that the effective date should be April 5, 1946, the date formal claim was filed with the Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained retroactive to April 5, 1946.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.