

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks Agreement:

1. When, on Saturdays during the hours 11:00 P.M. to 7:00 A.M., September 3, October 29 and November 5, and all subsequent Saturdays during 1949 and 1950, the assigned days of rest of the Roundhouse Clerk, it failed and refused and continued to refuse to assign clerical work performed by Clerks during these hours on other days, Sunday through Friday, consisting of:

Handling crew board;

Dispatching crews;

Posting log book, i.e., listing engine number, time called for, train number or extra train, date and name of crew members (engineers and firemen);

Handling record of layoffs, i.e., removing name tags from service board and placing same on layoff board and marking up on service board names of enginemen reporting for work who had been laying off;

Enter in Federal Rest Register Book Form No. TR 3539, (Employees' Call Register) Employees' EXHIBIT NO. 1 information taken from Form TR 955-T&P Ry., Employees' EXHIBIT NO. 2;

Other miscellaneous clerical duties arising necessary to be performed from time to time such as receiving and transmitting information over the telephone, information relayed to foremen pertaining to locomotives and movement of same, other matters relative to and incident to roundhouse operation, to clerks;

and failed and refused to utilize the services of a Clerk to perform the work; instead accomplished same by utilizing the services of Night Roundhouse Foreman, an employe outside the Clerks' Agreement and subject to the wage agreement of another craft to perform same.

2. When, during the twenty four hour period on Saturday, September 10 and Sunday, September 11, 1949, following Carrier action in nominally abolishing Roundhouse Clerks' positions at Alexandria effective at close of business on September 9, 1949, as result of system wide strike of Missouri Pacific Train and Enginemen, it removed the clerical work of:

Dispatching engine crews;

Handling of crew board and all other clerical work comprising the ordinary, normal and regular clerical duties in connection with Texas & Pacific engines and crews handled by Missouri Pacific Mechanical Department at its Alexandria joint facility account Texas & Pacific Railway engine and train service employees not on strike,

and utilized the services of General Foreman Mr. E. L. Biery, Missouri Pacific Road Foreman of Engines Mr. A. J. Speer and others outside the Clerks' Agreement to perform the clerical work, who hold no seniority rights thereunder, in violation thereof.

3. Following Carrier's action effective September 12, 1949, beginning 7:30 A. M. in transferring or moving Car Clerk M. J. Key, rate \$12.60 per day, listed on Southern District General Superintendent's Clerks Group 1 seniority roster as of April 20, 1920, from the Car Foreman's office, said to be located a distance of approximately 500 yards south of the Roundhouse office, and requiring Clerk Key to perform the clerical duties of Roundhouse Clerk necessary, incident to dispatching of Texas & Pacific Railway engines, engine crews, switch engines and crews, hostlers and hostler helpers, between the hours of 7:30 A. M. to 11:30 A. M.; 12:30 P. M. to 4:30 P. M., five days per week, Monday through Friday in conjunction with his duties as Car Clerk, the Carrier, on Saturdays and Sundays September 17 and 18, and Saturday and Sunday, September 24 and 25, failed to utilize a clerk to perform the clerical work on the rest days of Car Clerk Key who was filling the Roundhouse Clerk position, which arrangement continued until Saturday, October 1 and Sunday, October 2, when the Carrier then began filling Clerk Key's position on his rest days utilizing Clerk L. L. Ryder to fill same, but before doing so utilized General Foreman Mr. E. L. Biery, Road Foreman of Engines Mr. A. J. Speer and others outside the Clerks' Agreement to perform the Roundhouse clerical work necessary, incident to dispatching T&P Railway engines and engine crews, switch engines and crews, hostlers and hostler helpers, which work was ordinarily, normally and regularly assigned to and performed by Clerks during the 24 hour period around the clock, seven days per week, in violation of the Clerks' Agreement.

4. When on Saturday, October 1 and Sunday, October 2; Saturday, October 8 and Sunday, October 9; Saturday, October 15 and Sunday, October 16; Saturday, October 22 and Sunday, October 23; on which dates Clerk L. L. Ryder was utilized by the Carrier to work in place of Clerk M. J. Key on Clerk Key's rest days, it failed to utilize a Clerk to perform the clerical work of Roundhouse Clerk required to be performed during the hours 3 P. M. to 11 P. M.; instead it utilized General Foreman Mr. E. L. Biery and Missouri Pacific Road Foreman of Engines Mr. A. J. Speer, and others outside the Clerks' Agreement to perform the clerical work necessary incident to the dispatching of Texas & Pacific Railway engines and engine crews, switch engines and crews, hostlers and hostler helpers, which work was that ordinarily, normally and regularly performed by Roundhouse Clerks seven days per week for years, in violation of the Clerks' Agreement.

5. When during the days beginning September 12 and continuing each day to and including September 30, 1949 and October 3, 1949 to and inclusive of October 7, 1949; October 10 continuing to and inclusive of October 14, 1949; October 17, continuing to and inclusive of October 21, 1949 during the hours 3 P. M. to 11 P. M., it failed and refused to utilize the services of a Clerk to perform the Roundhouse clerical work formerly attaching to the Roundhouse Clerk position during those hours, which position was

nominally abolished effective at close of business September 9, but utilized General Foreman Mr. E. L. Biery, Missouri Pacific Road Foreman of Engines Mr. A. J. Speer, and others outside of the Clerks' Agreement to perform the clerical work necessary incident to dispatching T&P engines and engine crews, switch engines and crews, hostlers and hostler helpers, which clerical work was ordinarily, normally and regularly performed by Roundhouse Clerks seven days per week for years, in violation of the Clerks' Agreement.

6. When on September 12, 1949, continuing on each date to and including October 23, 1949, during the hours 11 P.M. to 7 A.M., the Carrier utilized General Foreman Mr. E. L. Biery, Missouri Pacific Road Foreman of Engines Mr. A. J. Speer, and others outside the Clerks' Agreement to perform the clerical work necessary, incident to dispatching of Texas & Pacific Railway engines and engine crews, switch engines and crews, hostlers and hostler helpers, which clerical work was ordinarily, normally and regularly performed by Roundhouse Clerks seven days per week for years, which clerical positions during these hours were nominally abolished with the close of business September 9, 1949.

7. That the Carrier compensate Clerk C. H. Sisson for a day's pay, \$12.00 per day, for each of the dates of September 3, October 29, and November 5, amount \$36.00, and that Clerk Sisson or other employes under the Clerk's Agreement involved in or affected by the Carrier's action in violation of the Agreement in not utilizing a Clerk to perform the clerical work stipulated in Claim "1" hereof, on Saturdays, which was one of the rest days of the Roundhouse Clerk position, 11 P.M. to 7 A.M., which clerical work was accomplished by the Carrier through the use of its officers or employes outside the Agreement, be allowed a day's pay at \$12.00 per day for each Saturday subsequent to November 5, 1949, until this dispute is disposed of and the claims satisfied.

8. That for the twenty-four hour period on each of the dates of Saturday, September 10 and Sunday, September 11, 1949, following the Carrier's action in nominally abolishing the positions of Roundhouse Clerk on all three shifts at Alexandria as stipulated in Claim "2" hereof, the Carrier shall be required to compensate the employes for a day's pay, amount \$12.00 per day, as follows:

C. H. Sisson	September 10, 1949	7 A.M. to 3 P.M.	... \$12.00
L. L. Ryder	September 10, 1949	3 P.M. to 11 P.M.	... \$12.00
M. L. Fox	September 10, 1949	11 P.M. to 7 A.M.	... \$12.00
C. H. Sisson	September 11, 1949	7 A.M. to 3 P.M.	... \$12.00
L. L. Ryder	September 11, 1949	3 P.M. to 11 P.M.	... \$12.00
M. L. Fox	September 11, 1949	11 P.M. to 7 A.M.	... \$12.00

TOTAL AMOUNT OF CLAIMS IN ITEM "8"

C. H. Sisson	2 days, September 10 & 11, 1949	
	@ \$12.00 per day\$24.00
L. L. Ryder	2 days, September 10 & 11, 1949	
	@ \$12.00 per day\$24.00
M. L. Fox	2 days, September 10 & 11, 1949	
	@ \$12.00 per day\$24.00

account Carrier's action in violation of the Agreement.

9. The Carrier shall compensate Clerk C. H. Sisson for a day's pay, amount \$12.00 per day, for each of the dates, September 17 and 18, September 24 and 25, 1949, account Carrier's action in violation of the Agreement during the hours 7 A.M. to 3 P.M., as stipulated in Claim "3" hereof:

4 days at \$12.00 per day, amount\$48.00

10. That the Carrier shall compensate Clerk C. H. Sisson for a day's pay, amount \$12.00 per day, for the dates of Saturday, October 1; Sunday, October 2; Saturday, October 8; Sunday, October 9; Saturday, October 15; Sunday, October 16; Saturday, October 22; and Sunday, October 23; account Carrier's violation of Agreement, during the hours 3 P. M. to 11 P. M., stipulated in Claim "4" hereof:

8 days at \$12.00 per day, amount\$96.00

11. That the Carrier shall compensate Clerk L. L. Ryder for a day's pay amount \$12.00 per day, for each of the dates of September 12 to and including September 30; for October 3 to and including October 7; for October 10 to and including October 14; for October 17 to and including October 21; during the hours 3 P. M. to 11 P. M., account Carrier's action in violation of Agreement as stipulated in Claim "5" hereof:

34 days at \$12.00 per day, amount\$408.00

12. Carrier shall compensate Clerk M. L. Fox for a day's pay, amount \$12.00 per day, for each day, September 12 to and including October 23, 1949, account Carrier's action in violation of the Agreement during the hours 11 P. M. to 7 A. M., as stipulated in Claim "6" hereof:

42 days at \$12.00 per day, amount.....\$504.00

**Summary of all Claims of claimants specifically named and
exclusive of Saturday claims after November 5, 1949
as stated in Claims "2" and "7":**

Clerk C. H. Sisson	3 days stipulated in Claims "1" and "7"	
	at \$12.00 per day.....	\$ 36.00
	2 days stipulated in Claims "2" and "8"	
	at \$12.00 per day.....	\$ 24.00
	4 days stipulated in Claims "3" and "9"	
	at \$12.00 per day	\$ 48.00
	8 days stipulated in Claims "4" and "10" at \$12.00 per day.....	\$ 96.00
	Total—17 days at \$12.00 per day.....	\$204.00
Clerk L. L. Ryder	2 days stipulated in Claims "2" and "8"	
	at \$12.00 per day.....	\$ 24.00
	34 days stipulated in Claims "5" and "11" at \$12.00 per day.....	\$408.00
	Total—36 days at \$12.00 per day.....	\$432.00
Clerk M. L. Fox	2 days stipulated in Claims "2" and "8"	
	at \$12.00 per day.....	\$ 24.00
	42 days stipulated in Claims "6" and "12" at \$12.00 per day.....	\$504.00
	Total—144 days at \$12.00 per day.....	\$528.00
	Total as of above.....	\$1164.00

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949, the Missouri Pacific Railroad employed at its Alexandria, Louisiana Roundhouse, three Roundhouse Clerks, with hours of assignment and rest days as follows:

Name	Rate	Seniority Date	Hours of Assignment	Assigned Day of Rest
L. L. Ryder	\$10.09	10/16/26	7:00 A. M.— 3:00 P. M.	Sunday
M. L. Fox	10.09	5/18/42	3:00 P. M.—11:00 P. M.	Monday
C. H. Sisson	10.09	10/ 3/42	11:00 P. M.— 7:00 A. M.	Tuesday

While the Clerks were assigned to work six days per week with a designated and assigned rest day, the fact remained that the Carrier did not pro-

position would be required. There is no rule upon which such construction can reasonably be placed. Your Board has said in Award 2334 that the scope rule does not preserve all clerical work to clerks and in Award 1694 that the performance of clerical work incident to a position not within the scope of the agreement does not subject such work to the terms of the agreement.

We have stated our opinion with reference to the application of Rule 1, the scope rule, to this case. It is our position that none of the other rules cited by the Employees have any bearing upon the dispute.

Rule 2 gives the definition of clerical worker and the only employees to whom it applies are those who devote four or more hours of their time per day to clerical work. If this rule had any application to the case at all, it would largely defeat the claims because the claimants are clerks, their claims are based on an assumption of existence of clerk positions and are made at clerks' rate of pay. It has been shown that the volume of clerical work involved does not even approach four hours per day. Even if the work was held to be within the scope of the agreement, there is nothing in Rule 2 that would require the use of clerical workers.

Rule 3 covers seniority datum. There was no change made in the seniority status of either of these claimants. In the quotation above from Award 2334 the statement is made that seniority rules merely control the disposition of work available to clerks. There is nothing in the rule that requires the Carrier to hold work under the Clerks' Agreement to make it available to clerks merely because they have seniority. If the work is properly assignable to others it is not available to clerks. We have shown that the work here involved was properly assignable to others.

Rule 4 covers promotions, assignments and displacements. The Roundhouse Clerk positions at Alexandria were abolished; there were no promotions, assignments or displacements relating to those positions in this picture.

Rule 5 refers to seniority districts. How the designation of seniority districts could have any bearing on this dispute is more than we can understand. Nothing was done that affected established seniority districts in any manner.

Rule 6 covers vacancies and new positions. The positions involved in these claims were abolished. There were no vacancies or new positions in evidence.

Rule 43 covers effective date and changes. Since the action of the Carrier in this case had no bearing on the effective date of the agreement and the abolishment of positions did not make an iota of change in any provision thereof, it is incomprehensible to us how this rule could be held in any manner to support these claims.

The construction the Employees are endeavoring to place on the agreement in this case would mean that the Carrier could never abolish a clerical position and permit a non-covered employee to write a single word that had been included in the work assignment of the clerk who had occupied such position, without incurring liability for payment to such clerk of a day's pay for each day it was done. The parties to this dispute did not ever agree to any such construction; there is nothing in the agreement to support a conclusion of that kind. If the payments involved in this case were not agreed to, they cannot be collected by claim. We believe a denial is in order.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, three roundhouse clerks were employed in the Alexandria roundhouse on seven-day positions necessary to the continuous operation of the railroad. No relief was furnished and they worked their assigned rest day. Effective September 1, 1949, the Carrier, for the purpose of complying with the 40 Hour Week Agreement, rearranged the scheduled hours and assigned rest days for each position, except that the third trick position, with hours 11:00 P. M. to 7:00 A. M..

was established as a six-day assignment, the position not being worked on Saturdays. However, the record discloses that the work normally performed on Saturday by the third trick during the hours of his assignment were performed by the night roundhouse foreman. The rule applicable to this situation was expressed by the Board, Referee Carter assisting, in Award 4477 where it said: "It is the rule, however, that when the work demands the assignment of a clerk, all of the clerical work belongs to the clerk's position and when such work is assigned on week days it cannot be assigned to employees not under the Clerks' Agreement on Sundays."

Under Rule 25½ of the Agreement effective September 1, 1949, no relief having been assigned, this work belonged to an available extra or unassigned employee, but in any event, to the regular employee. Consequently, the Carrier violated the Agreement, as claimed, on September 3, 1949, when clerk's work was performed during the third trick by employees not under the Clerks' Agreement. This also was the situation on October 29, November 5 and subsequent Saturdays.

Effective with the close of business on September 9, 1949, the positions of the three roundhouse clerks were abolished, due to the strike of the train and engine service employees. At the roundhouse where these clerks were employed, the Carrier services engines for the Texas and Pacific Railroad as well as its own, and engines for that Carrier were dispatched from the roundhouse during the period of the strike. After the strike commenced, the volume of work at the roundhouse was approximately 25% of normal. Between the dates of September 10 to September 12, 1949, no clerks were employed at the roundhouse. A car clerk in the car foreman's office in the Car Department was retained in service, he being the senior man and on the same seniority district as the claimants. On September 12, 1949, he was required to report at the roundhouse during his assigned hours of 7:30 A. M. to 11:30 A. M. and 12:30 P. M. to 4:30 P. M., as well as perform his clerk's duties for the car foreman.

The claims, other than claims (1) and (7), relate to the period covered by the strike when no roundhouse clerks were employed and the necessary clerical work was performed either by the car clerks or by supervisory personnel. The contention of the Petitioners is that the work of the roundhouse clerks is covered by the Scope Rule of the Clerks' Agreement and that the clerical work here involved should have been performed by clerical employees covered thereunder. The contention of the Carrier is that such clerical work performed by the foremen was incidental to their position.

The work which is the subject matter of this position has been described as: Handle crew board, dispatch crews, post crew log book, keep record of men laying off, telephone calls, register crews, and "other duties". The submissions indicate that a clerk (Car Clerk Key) handled the crew board; that when, contrary to instructions, callers telephoned to the roundhouse for names of men to be called, anyone available answered the phone and gave them the information. It was not a prerogative of the clerks to "dispatch crews". Handling crew board and dispatching crews, from the point of view of the roundhouse crew, is the same thing. The log book was posted by the clerk when on duty, and otherwise by the foreman. This included the record of men laying off. The record does not indicate that the telephone calls were anything more than customary calls to the roundhouse, and were handled by anyone available. There is no provision of the Agreement nor any showing from custom and tradition that establishes such calls as exclusive work of clerks. As to others besides the foreman performing clerk's duties, we find that while the Petitioners assert that road engine foremen and hostlers performed clerks' work, this is denied by the Carrier except as to the use of the telephone. From this state of the record we must conclude that the Petitioners have not established their contention with respect to the road foreman of engines and the hostler performing clerical duties. Insofar as they answered the telephone they were not engaged in any work that was exclusively clerks' work.

The record further shows that at the time of the Agreement of 1928 there were three roundhouse clerks' positions; that these were subsequently reduced to one; that in 1940 the second trick position was restored, and in 1942 the third trick was established. Where no clerk was available, the roundhouse foreman performed the clerical duties which were incident to his position. In Award 3211, on this property, this Board said that when a roundhouse clerk's position was abolished, the clerical duties incidental to the foreman's position could be performed by him.

In the case now before the Board the particular duties, clerical in nature, performed by the foremen were: posting crew log book, recording men laying off, answering the telephone, and registering crews. These all appear to be the traditional records required to be kept by a roundhouse staff by reason of their relation to the work there performed and are, consequently, duties incidental thereto. It is an accepted principle that a foreman may properly perform clerical work incidental to his regularly assigned duties. Such work is treated as excluded from the Clerks' Agreement. When such clerical work becomes too burdensome, only employees under the Clerks' Agreement may perform it. We do not find that the 1928 Agreement altered this principle. It follows that when the work here involved diminished and the foremen could again absorb such clerical work incident to their positions, it was not a violation of the Clerks' Agreement for them to do so when no clerks were assigned to perform the work.

We must therefore conclude that the Scope Rule of the Clerks' Agreement was not violated when, during the times herein described, the clerical work was performed by foremen.

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

The Carrier violated the Agreement.

AWARD

Claims 1 and 7 sustained to the extent indicated in the Opinion and Findings.

Claims 2, 3, 4, 5, 6, 8, 9, 10, 11 and 12 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon.
Acting Secretary

Dated at Chicago, Illinois, this 9th day of March, 1951.