

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, 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 Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When Trainmaster Mr. D. E. Walker performed the clerical work consisting of taking record of and transcribing investigation on Tuesday, April 11, 1950, at Lexa, Arkansas and on Monday, June 19, 1950 at Paragould, Arkansas, and failed and refused to utilize Trainmaster's Clerk Mr. H. B. Lollar whose seniority date on the Group 1 Southern District General Superintendent's roster of September 1, 1917, entitled him to perform the work;
2. That the Carrier shall be required to reimburse Trainmaster's Clerk H. B. Lollar for the amount of wage loss sustained as per Claim Statement attached hereto and made a part hereof, growing out of the Carrier's action in violation of the Agreement.

CLAIM STATEMENT

April 11, 1950, Lexa, Arkansas

(A) 1 hour traveling time, 5 P. M. to 6 P. M. at pro rata rate of \$1.72 per hour, Wynn, Arkansas to Lexa, Arkansas...	\$ 1.72
(B) 1 hour waiting time, 6 P. M. to 7 P. M. at pro rata rate of \$1.72 per hour at Lexa, Arkansas	1.72
(C) 2 hours and 15 minutes working, 7 P. M. to 9:15 P. M. at punitive rate of \$2.58 per hour at Lexa, Arkansas...	5.80
(D) 1 hour traveling time, 9:15 P. M. to 10:15 P. M. at pro rata rate of \$1.72 per hour, Lexa, Arkansas to Wynne, Arkansas	1.72
	\$10.96

June 19, 1950, Paragould, Arkansas

(A) 2 hours traveling time, 5 P. M. to 7 P. M. at pro rata rate of \$1.72 per hour, Wynne, Arkansas to Paragould, Arkansas	\$ 3.44
(B) 1 hour and 30 minutes working, 7 P. M. to 8:30 P. M. at pro rata rate of \$1.72 per hour at Paragould, Arkansas	3.87
(C) 2 hours traveling time, 8:30 P. M. to 10:30 P. M. at pro rata rate of \$1.72 per hour, Paragould, Arkansas, to Wynne, Arkansas	3.44
	\$10.75
Total amount	\$21.71

which amount Clerk Lollar would have received had he been permitted to perform the work which was a part of the ordinary, normal and regular duties of the Trainmaster's Clerk position at Wynne, Arkansas, for many years.

EMPLOYEES' STATEMENT OF FACTS: Wynne, Arkansas is located on the Memphis Division of the Missouri Pacific Railroad where the main line of that Division passes Wynne en route Bald Knob, Arkansas to Memphis, Tennessee and another main line passes Wynne en route from Knobel, Arkansas to Lexa and McGehee, Arkansas. It is the headquarters of the Assistant Division Superintendent and of the Trainmaster. The Train Dispatcher's office of the Memphis Division is located at Wynne at which point there has been employed for many years a Trainmaster's Clerk. It is reasonably accurate, we think, to say that Wynne is located at about the center of the Memphis Division.

This Trainmaster's Clerk position at Wynne, Arkansas prior to July 1, 1943 when the list of "excepted" positions was revised, was excepted from the provisions of all of the rules of the Clerks' Agreement with the exception of the Scope Rule. When the revision of the list of excepted positions was made following agreement of the parties in Mediation procedure, Agreement signed on May 8, 1943, effective July 1, 1943, the status of this Trainmaster's Clerk position was changed and it was placed under the provisions of the Agreement and subject to the Agreement with the exception of Rules 4, 6, 7, 8, 9, 13, 14 and 21 to 29 inclusive and it then and thereafter came within the category of the positions designated in the Agreement commencing on page 56, as Phase "B", exempted from the seniority, promotion, assignment, displacement and overtime rules of the Agreement. A monthly rate applied to the position for all services performed.

The occupant of the Trainmaster's Clerk position at Wynne performed the work of transcribing all discipline cases, investigations held on the Memphis Division, whether they were held at his headquarters in the Wynne office or away from Wynne on the line of road and he received no additional compensation for any service away from his headquarters or for services performed outside of office hours since he was paid a monthly rate for all services performed.

Effective September 1, 1949 the position of Trainmaster's Clerk at Wynne, Arkansas became subject to the 40-hour work week rule and the provisions of the Chicago Agreement of March 19, 1949, effective September 1, 1949. Article II, Section 1 (a)—General of the Agreement provides in part:

"The Carrier will establish effective September 1, 1949 **FOR ALL EMPLOYEES** subject to the exceptions contained in this Article II, a work week of 40 hours consisting of five days of eight hours each with two consecutive days off in each seven." (Emphasis ours.)

to perform it. The change in agreement provisions did not change the nature or coverage status of the work.

The Employees say the Carrier "violated Rules 1, 2, 3, 4, 5, 6, 25, 28 and 43 and all related rules of the Agreement as well as the wage Agreement." We hold that the only one of these rules that could be involved is Rule 1—Scope and we have shown this rule could not have been violated as the work does not come under that rule or any other rule of the agreement. Aside from Rule 1, the Employees have not shown how they consider any of the rules mentioned by number or any others of the Clerks' Agreement were violated. We, therefore, list below the ones cited by number together with their titles for ready reference:

- 1—Scope Employees Covered
- 2—Definition of Clerical Workers and Their Qualifications
- 3—Seniority Datum
- 4—Promotions, Assignments and Displacements
- 5—Seniority Districts
- 6—Vacancies and New Positions
- 25—Overtime and Calls
- 28—Temporary or Emergency Travel Service
- 43—Effective Date and Changes.

It is the position of the Carrier that none of the rules listed or any other rule of the Clerks' Agreement was violated by Trainmaster Walker typing investigations involved in this dispute. It is up to the Employees to prove violations in order to support their claims.

The presence of Rules 4 and 6 in the above list is an example of the indiscriminate manner in which the Employees charge the Carrier with rule violations. No "Phase B" position on this property is now or ever has been subject to Rules 4 and 6 of the Agreement and the Agreement itself contains specific provision in Attachment "D" to that effect.

The claims themselves are calculated on the basis of speculative assumption as to what would have been done and the time periods that would have been involved if the claimant had actually been used.

(Exhibits not reproduced.)

OPINION OF BOARD: It does not appear that the taking and transcribing of records of investigations has been assigned exclusively to positions within the scope of the Agreement. In fact on May 2, 1947, the Chief Personnel Officer of the Carrier by letter to the General Chairman of the Organization, Employees' Exhibit N and Carrier's Exhibit N, stated his position to be that an officer of the Carrier could take and make a record of an investigation should the circumstances be such as would in his opinion warrant such action on his part. No protest followed.

The Organization alleges that it was a practice for the Trainmaster's Clerk on this Division to take and transcribe all records of investigation. However, in answer to Carrier's allegation that the Trainmaster had typed investigations for several years and that Claimant was aware of such fact but made no protest, the Organization stated, "When Mr. Lollar was being paid a monthly rate for compensation for all services performed he probably did not say much about someone else handling his work that would at best have caused him to leave his headquarters, travel and work at away-from-home points with the obvious inconvenience, expenses, etc."

Certainly the evidence in this case does not sustain the Organization's claim that such work had been performed exclusively by the Claimant for many years.

Our Award No. 3657, cited and relied upon by the Organization, is not analogous because there the work involved was specifically assigned by bulletin to the Claimant.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.