

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Angus Munro, 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 on Saturday, October 28, 1950, a rest day of Cashier R. P. Moore, Lexington, Missouri, assigned days Monday through Friday, rest days Saturday and Sunday, it utilized an employe outside the Clerks' Agreement, one covered by the wage agreement of another craft, to perform the clerical work of "billing" four carloads of corn originating at Lexington, SP 38564, MP 31069, MKT 76021 loaded in the P. M. of October 27 and MP 93124 loaded in the A. M. of October 28, 1950, which cars moved from the elevator located in Lexington Yards about 10 A. M. and out of Myrick on Train No. 94, October 28, 1950;
2. Cashier Clerk Mr. R. P. Moore shall be compensated for a "call" of two (2) hours at \$2.418 per hour, amount \$4.84 account Carrier's violation of Scope Rule 1, Definition Rule 2, the Seniority, Overtime and Calls and related rules of the Clerks' Agreement.

**EMPLOYEES' STATEMENT OF FACTS:** Lexington, Missouri is located on a branch line of the "Eastern"—Operating Division of the Missouri Pacific Railroad, a distance of probably two or three miles, more or less, from Myrick, Missouri, which is a station located on the Carrier's main line of its River Route, also a part of the Eastern Division.

On the claim date here involved the station force employed at Lexington, Missouri, subject to the scope and operation of the Clerks' Agreement consisted of:

Cashier, rate \$12.90 per day, occupied by Raymond P. Moore, whose seniority date on the Eastern Division Station and Yards Group 1 Clerks' seniority roster is March 1, 1918, with assigned hours of 8 A. M. to 12 Noon; 1 P. M. to 5 P. M., Monday through Friday, rest days Saturday and Sunday.

There is an Agent at Lexington Station who has charge of both Lexington and Myrick Stations, which position is described in the Agreement of the Order of Railroad Telegraphers as a Star Agency, who is compensated on

ing assigned hours who has ample time to perform the service which is incidental to his own duties throughout such assigned hours.

In Award 5281, recently issued by Your Honorable Board, you stated that it has been long and firmly established that telegraphers with telegraphic duties to perform have the right to perform clerical work to the extent necessary to fill out their time provided the clerical duties are incidental to, or in proximity with, their work as telegraphers. This award was supported by reference to Awards 615, 636, 4559 and 4734. In this case before you, the work involved was both incidental to and in proximity with the duties of the employe under the 'Telegraphers' Agreement who performed it.

The facts related in this submission have been discussed or handled with the Employes on the property, with the exception that all such discussion and handling has been on the basis that the telegrapher billed the four cars of corn on which the claim is based, but it has developed, subsequent to the submission of the case to your Board, that the agent actually billed the cars. This was done because the telegrapher was busy at the moment, but he would have had ample time later in the day to have done the work. It should be understood also the various kinds of clerical work, including the making of waybills, have been done by both the telegraphers and the agent for many years, and this work has been definitely incidental to those positions.

(Exhibits not reproduced).

**OPINION OF BOARD:** This claim is advanced by the General Committee of the Brotherhood, hereinafter called Petitioner, for and on behalf of one Moore, hereinafter called Claimant, and is against Missouri Pacific Railroad, hereinafter called Carrier.

When the Chicago Agreement came into force and effect Carrier arranged Claimant's assignment so that Saturday became one of his rest days. This case involves work performed on a Saturday, more particularly described in Petitioner's allegations. The work, in turn, has to do with the billing of carload shipments. Much is said in the record about less than carload shipments but whether the work connected with such type of shipment differs from the work connected with carload shipments we do not know and cannot ascertain. At any rate we are here only concerned with carload shipments and this Opinion does not refer to other than such class.

There is no question but that some person or persons performed the work as alleged by Petitioner and that they were not within Petitioner's Schedule but instead were within the Telegraphers' Schedule. The parties are in sharp conflict and dispute with reference to the identity and rank of those performing said work. Petitioner contends identity and rank is of little or no importance just so long as it was someone outside of Petitioner's Schedule. On that point we disagree with Petitioner. On the record submitted we find the work in question was performed by one with the rank of operator, see Carrier's Exhibit "B".

Petitioner avers said act on the part of Carrier, aforesaid, constitutes a violation of and is repugnant to Schedule 1, 2, Seniority, Overtime, Call and other related rules. The defense of Carrier is that Claimant did not have the exclusive right to the work. We think that is the controlling and primary issue. As we understand this case the work was performed at a duty station other than the duty station where Claimant performs his duties when he is on duty. We further understand Claimant has a duty assignment. There is further no question but that the work in question is clerical in nature. It seems to us the question is, what is this duty assignment held by Claimant? The fact there is such an assignment means there is sufficient clerical work to warrant Carrier to retain a clerk. In Award 5623 (1952), it was held the assigned work could not be performed by one not within the Schedule on the job holders' rest days, and cases cited therein. Award 4832 (1950) holds when the assignment came into being the work

covered by it became exclusive to the Clerks. From the facts of record, though in dispute, we conclude and find Claimant performed the work in question while on active duty. Other cases bearing on this subject are Award 3858 (1948) and cases cited therein. Finally, Award 5622 (1952) holds the Chicago Agreement did not change or abrogate the above and foregoing rule or principle.

As we view this case it is another in a long line of cases where Carrier is not free to operate at the installation we are concerned with as it desired, however much its desires fall within the realm of good business judgment. But to say that Carrier's wishes or wants are desirable is speculation and have no place in this Opinion in that we may not alter or amend Schedules.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 by reason of the above and foregoing Carrier violated the Schedule as alleged by Petitioner and that Claimant be compensated for a call.

#### **AWARD**

Claim sustained to the extent indicated in the above and foregoing Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.