

Award No. 6447
Docket No. CL-6505

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, 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, effective Friday, June 27, 1952, it nominally abolished the clerical position of Bill Clerk at Morrilton, Arkansas and removed the clerical work comprising the essence and substance of the regular assigned duties of that position out from under the scope and operation of the Agreement and utilized a Station Agent, an employe of another class and subject to the Agreement of another craft to perform said work, in violation of Scope Rule 1, Definition Rule 2 and other related rules of the Clerks' Agreement;

2. That the Carrier be directed by appropriate Board Order to reimburse claimants, Clerks Troy Freeman, A. J. Baker and A. D. Reynolds, for wage loss suffered due to the Carrier's action in violation of the Agreement, as shown on "Claim Statement" attached hereto and made a part hereof, until the violation of Agreement was removed concurrent with the restoration of the Bill Clerk position at Morrilton, Arkansas effective October 14, 1952.

CLAIM STATEMENT

Name	Seniority Date	Claim Dates	Amount of Claim	Basis of Explanation of Claim
Troy Freeman "A" 10/13/41 (at Ft. Smith- Check Clerk)		July 7-8-9-10-13 14-15-16-17-20- 21-22-23-24-27- 28-29-30-31 Aug. 3-4 21 days @ 60c day \$12.60		Freeman did not work June 27 to July 6, 1952 inclusive. Account Bill Clerk position rate \$14.26 being abolished effective June 27 at Morrilton he exercised his seniority upon Check Clerk position at Ft. Smith, rate \$13.66 per day suffering a wage loss of 60c per day.

Name	Seniority Date	Claim Dates	Amount of Claim	Basis of Explanation of Claim
Troy Freeman (continued)		Aug. 11-13-13-14-17 18-19-20-21-25-26 27-28-29 14 days @ 48c day	6.72	Account displaced at Ft. Smith due to return of regular man A. S. Halley, Aug. 5, 1952, Freeman then displaced Check Clerk at Russellville, rate \$13.78 per day and suffered wage loss of 48c per day. In making this change of job, Freeman did not work on 4 work days, namely, Wed., Aug. 5; Thurs., Aug. 6; Fri., Aug. 7 and Monday, Aug. 10.
(at Russellville- Check Clerk)		Sept. 1-2-3-4-5-8-9- 10-11-12-15-16-17- 18-19-22-23-24-25- 26-29-30 22 days @ 48c day	10.56	
(at Russellville- Check Clerk)		Oct. 1-2-3-6-7-8-9-10 13-14-15-16-17 13 days @ 48c day	6.24	
			<u>\$36.12</u>	
A. J. Baker "A" 10/21/42		Aug. 20-21-24-25-26 27-28-31 8 days @ 30c day	2.40	When Freeman displaced Daniels off Check Clerk position at Russellville and Daniels displaced Heaton off Check Clerk job at Russellville, then Heaton displaced A. J. Baker off Vacation Relief Clerk position at Morrilton. Baker then displaced Reynolds off Yard Clerk position, Ft. Smith. Baker's wage loss was 30c per day.
		Sept. 1-2-3-4-8-9-10- 11-14-15-16-17-18- 21-22-23-24-25-28-29 20 days @ 30c day	6.00	
			<u>\$8.40</u>	
A. D. Reynolds "A" 2/16/43		Aug. 21-22-23-24 (Rest days 25-26) 27-28-29-30-31 9 days @ 12c day	1.08	Account Clerk Reynolds displaced senior clerk Baker off Yard Clerk job at Ft. Smith, he exercised his seniority on position of Yard Clerk, Van Buren, displacing O. J. Smith, all of which was incidental to the abolishment of the Bill Clerk position at Morrilton on June 26, 1952.
(at Van Buren- Yard Clerk)		Sept. 3-4-5-6 (Rest days 8-9) 10-11-12-13-14 (Rest days 15-16) 17-18-19-20-21 (Rest days 22-23) 24-25-26-27-28 (Rest days 29-30) 19 days @ 12c day	2.28	
(at Van Buren- Yard Clerk)			<u>\$3.36</u>	

NOTE: There were other employees adversely affected and who suffered wage loss account the Bill Clerk job abolished on June 26, 1952, such as O. D. Powell and others, who are not listed here as a check of the payroll will reveal.

that it may flow out to clerks and ebb back to telegraphers dependent upon the capacities of the latter, the Carrier holds that tradition is with the telegraphers with respect to this work. It is our opinion that the temporary performance of it, even over a period of years while it exceeds the capacity of the telegrapher force, does not change tradition to the clerks. Tradition is fixed by fact; it is not subject to transfer.

There are also awards that deal otherwise directly with the matter of coverage of clerical work by the Clerks' Agreement. Award 1694 said that performance of clerical work incident to a position not within the scope of the Agreement does not subject that work to the terms of the Agreement. Award 2334 said the scope rule of the Clerks' Agreement does not reserve all clerical work to clerks. Award 2674 said that clerks have no right to claim for themselves the incidental clerical duties of positions not covered by the Clerks' Agreement.

We think the principle here involved is well summed up in one paragraph of "Opinion of Board" in Award 5458 which reads as follows:

"Under many of our decisions there can be no question that if the clerical work of a position of another craft becomes too great for its holder, it may be assigned only to a clerk, and when the amount of clerical work abates so that the occupant can again perform it himself, it can be turned back to him without violating the Clerks' Agreement."

The situation here involved was handled strictly in accordance with procedure approved in the opinion quoted and by the terms of that opinion was not a violation of the Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is here advanced by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees against the Carrier for a violation of the Scope rule and other rules of the Clerks' Agreement. It is claimed that on June 27, 1952, the job of bill clerk at Morrilton, Ark., was abolished and the duties thereof were assigned to an agent covered by the Telegraphers' Agreement. The clerk's job was reinstated by the Carrier October 14, 1952.

The question of third party notice is now raised by the showing that the agent who did the work during this period and his Organization, The Order of Railroad Telegraphers, have not had notice of the pendency of the claim. The Carrier makes protest against this "Board rendering decision upon the scope issue unless The Order of Railroad Telegraphers is called in to participate in the proceedings as a party with interest in the outcome."

Because the agent has not, since October 14, 1952, been doing the work we feel that neither he nor his Organization is presently involved in this dispute. The original Employees ex parte submission was received by this Division January 26, 1953. Inasmuch as the claim herein covers only the period from June 27, 1952 to October 14, 1952, we are of the opinion that this was such a single, fortuitous, completed occurrence as does not have a continuing effect. No one will be displaced if the claim is sustained. No one's future rights will be substantially affected by determining whether or not a violation has occurred, except insofar as this Award establishes a precedent for the parties' future guidance. We hold, therefore, that there is no third party presently involved herein, entitled to notice under Section 3, First (j) of the Railway Labor Act.

On the merits of the claim we have studied the cited awards to apply to these facts and find that Award 6293 wherein a telegrapher left his post to do clerical duties involved these same parties, and resulted in a sustaining award and a minority dissent thereto. Award 4197 was also between the

present parties, and covered an occasion wherein work of a clerk was done by the agent during the clerk's meal period.

In the present case there is little, if any, dispute on the actual facts. The clerk's job was abolished "and when this was done some of the work formerly handled by the incumbent was turned back to the agent."

Under the rules the Carrier has a right to abolish an unneeded job. But in assigning work, whether it be left over from an abolished job or otherwise, there are other rules of the Agreement limiting such assignment. It is difficult to determine from the docket whether the agent was more clerk or more agent during this period. The Carrier explains its action by showing a temporary decline in business at this station and claims the benefit of the ebb and flow awards of this Division.

In the light of all the cited awards, we are of the opinion that Awards 6293 and 4917 between these same parties and on nearly similar facts, serve as our best precedents. Accordingly, we hold that the Agreement has been violated and that the claim should be sustained.

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 Carrier has violated the Agreement.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1954.