

Award No. 6484

Docket No. CL-6506

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 on July 9, 1952, it nominally abolished the position of Bill Clerk, rate \$14.26 per day, at Conway, Arkansas, and removed the clerical work comprising the essence and substance of the regularly assigned duties of the position out from under the scope and operation of the Agreement and utilized a Station Agent, an employee 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. The Carrier be directed by appropriate Board Order to reimburse claimants Clerks F. M. Heaton and W. F. Mullings, for wage loss suffered due to the Carrier's action in violation of the Agreement as shown in "Claim Statement" attached hereto and made a part hereof, which claims are continuing until the violation of Agreement is removed and the claims satisfied.

CLAIM STATEMENT

| Name | Seniority Date | Claim Dates | Amount of Claim | Basis and Explanation of Claim |
|--------------------------------|-----------------------------|--|--------------------------|--|
| F. M. Heaton | "B" 10/28/41 "A" 6/ 6/42 | July 9-10-11-14-15- 16-17-18-21-22-23- 24-25-28-29-30-31 | 17 days @ 48¢ day \$8.16 | Account Bill Clerk job, Conway, rate \$14.26 abolished, claimant exercised seniority to position of Check Clerk at Russellville, Ark., |
| (at Russellville, Check Clerk) | | Aug. 1-4-5-6-7-8- 11-12-13-14-15 | 11 days @ 48¢ day 5.28 | \$13.78 per day, or net wage loss of 48¢ per day. |
| | | | \$13.44 | |

| Name | Seniority Date | Claim Dates | Amount of Claim | Basis and Explanation of Claim |
|----------------|----------------|--|-----------------|---|
| W. F. Mullings | "A" 9/10/42 | July 28-29-30-31 4 days @ 30¢ day | \$1.20 | Account displaced by Heaton due to abolishment of Bill Clerk job, Conway, Mullings exercised seniority to Relief Clerk position (Pool 5) at Ft. Smith (Yard Clerk) rate \$13.48 per day, net wage loss 30¢ per day. |
| | | Aug. 1-4-5-6-7-8- 11-12-13-14-15-18- 19-20-21-22-25-26- 27-28-29 21 days @ 30¢ day | 6.30 | |
| | | Sept. 2-3-4-5 4 days @ \$1.80 day | 7.20 | Account effective Sept. 1, 1952, rate of relief job on Baggage-man went to rate of job of \$11.98 per day—difference in \$13.78 and \$11.98—\$1.80 per day, for four days \$7.20. |
| | | | \$14.20 | |

Claimant Mullings' claim is continuing each work day until dispute is disposed of.

NOTE: Copy of Superintendent's notice of July 7 to Clerk Mullings is attached hereto, also Superintendent's notice dated July 17, 1952 to Clerk Cox re Mullings going to Ft. Smith; also Superintendent's notice to Cox that Mullings was going to work Monday, July 28, 1952 at Ft. Smith.

There were other employees adversely affected as check of payroll will reveal, such as Clerk L. D. Houchins, George Arning, O. J. Smith, W. R. Biggerstaff, R. L. Urquhart, who were displaced and suffered wage loss.

Clerk L. D. Houchins left the service on September 10, 1952.

COPY

Coffeyville, July 7, 1952

Mr. W. F. Mullings, Russellville, Ark.,
Mr. E. A. Jacobs, Russellville, Ark.

Account position of Bill Clerk at Conway, Ark. abolished, Mr. F. M. Heaton, Jr. has given notice of his desire to exercise seniority to position of 3:00 A. M. Check Clerk at Russellville, Ark., displacing Mr. W. F. Mullings, effective 3:00 A. M., July 9, 1952.

This exercise of seniority is hereby authorized.

Mr. Mullings' attention is called to provisions of Rule 14D, which requires filing of name and address to protect seniority rights.

(Signed) C. L. Christy

cc: CCM-FMA PR-WFM

COPYCoffeyville, July 17, 1952
R-2953Mr. M. W. Cox, Ft. Smith, Ark.,
Mr. B. C. Burkert, Ft. Smith, Ark.

Account displaced as check clerk at Russellville, Mr. W. F. Mullings has given notice of his desire to exercise seniority to position of Rest Day Relief Clerk (pool 5) at Ft. Smith, displacing Mr. M. W. Cox.

This exercise of seniority is hereby authorized.

Mr. Mullings will advise later when he will assume duties of the position, as he desires to break in on it.

(Signed) C. L. Christy

cc: CCM-WFM PR-MWC

COPYCoffeyville, July 25, 1952
R-2953M. W. Cox, Ft. Smith, Ark.
B. C. Burkert, Ft. Smith, Ark.

Supplementing my letter July 17, 1952, relative W. F. Mullings displacing M. W. Cox:

Mr. Mullings will assume duty at 5:00 A. M., Monday, July 28, 1952.

(Signed) C. L. Christy

cc: CCM-WFM PR-MWC

EMPLOYEES' STATEMENT OF FACTS: Prior to April 2, 1952, the Freight Office force subject to the scope of the Clerks' Agreement at Conway, Arkansas, located opposite but across some six tracks from the Passenger Station where the Telegraphers work, was—

| Position | Rate | Assigned Hours | Assigned Days | Rest Days |
|-------------|----------|----------------------------------|-------------------|---------------|
| Cashier | \$14.48 | 8AM-12N; 1PM-5PM | Mon. through Fri. | Sat. and Sun. |
| Bill Clerk | 14.18 | 10:30AM-2:30PM; 3:30PM-7:30PM | Mon. through Fri. | Sat. and Sun. |
| Check Clerk | 13.70 | 7AM-11:30AM; 12:30PM-4PM | Mon. through Fri. | Sat. and Sun. |
| Trucker | 1.47 hr. | 8AM-12N; 1PM-5PM | Mon. through Fri. | Sat. and Sun. |

Also there was a station force at Conway subject to the scope and operation of the Agreement of the Order of Railroad Telegraphers, consisting of—

Telegrapher — 7:59AM- 3:59PM

Telegrapher — 3:59PM-11:59PM

Telegrapher — 11:59PM- 7:59AM,

and a Station Agent, which is designated as a Star Agency position, rated at \$406.80 per month as of February 1, 1951, with no assigned hours. Subsequent rate changes, if any, in so far as this Agent is concerned, are not shown here.

There also appears in the "Opinion" of Award 2071 the following paragraph:

"The Board cannot say that because the Agent at Wynne was under the telegraphers agreement, the clerical work could be assigned to him; but, it could not be assigned him if he were not under the telegraphers' agreement. Logically, there could be no distinction."

We hold that there can be and there is a distinction—and that it is a logical distinction. The distinction is that station clerical work is within the scope of the Telegraphers' Agreement as well as the Clerks' Agreement—it was under the Telegraphers' Agreement first and has continued to be thereunder since the first agreement was made. There certainly would be a difference between giving this work to an employe under the Telegraphers' Agreement and to one who is not. But your Board has gone farther than that in the flow and ebb awards which hold that it is not a violation of the Clerks' Agreement to have clerical work incidental to any employe's position performed by such employe whether he is covered by another agreement or not. Every item of work involved in the instant dispute is certainly incidental to the duties of the Agent; he was in charge of everyone of them even when they were being performed by clerks, they are part of the reason why we have an agent at Conway.

In the case covered by Award 4197 the Agent performed some of the duties of an established clerks' position while the incumbent was absent during his meal period. Obviously, the distinguishable facts eliminate any application of that award to the instant dispute.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is opposed by the carrier on the first ground that no notice of the hearings of this division has been given a third party "involved" in the claim.

Section 3 First (j) of the Railway Labor Act requires

" * * * the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any dispute submitted to them."

The question presented is identical with that raised and decided in Award No. 6482. The same reasoning, opinion, findings and award expressed therein are repeated and re-stated as our opinion in the present docket.

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 parties to this dispute, the Brotherhood of Railway and Steamship Clerks and Missouri Pacific Railroad Company, attended an oral hearing thereon on March 10, 1953;

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 no jurisdiction over the persons involved herein who have not been given notice of the hearing.

That this Division of the Adjustment Board has jurisdiction by law over all the classes of employees and the dispute involved herein.

That the claim should be dismissed without prejudice for lack of jurisdiction over the persons not notified.

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AWARD

Claim dismissed without prejudice and in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 11th day of February, 1954.