

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

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**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 Monday, September 14, 1953, it assigned the work and responsibility of selling tickets to General Clerk Luther T. Smith, rate \$13.82, at Lee's Summit, Missouri, and required this Clerk to assume the duties and responsibilities of a Ticket Clerk, Monday through Friday, and failed and refused and continued to refuse to compensate him at the rate of \$14.24 per day, which is the minimum Wage Agreement rate for a Ticket Clerk on the Eastern Division;

2. Claimant Luther T. Smith or any other occupant of the General Clerk position at Lee's Summit shall be allowed the difference in rate of General Clerk, \$13.82 per day, and the minimum Ticket Clerk rate of \$14.24, which should have been paid for each day, Monday through Friday, effective September 14, 1953, account Carrier's violation of Rule 31(c) of the Clerks' Agreement.

**EMPLOYEES' STATEMENT OF FACTS:** Lee's Summit, Missouri is located on the Carrier's main line of its Eastern Division, 256 miles west of St. Louis, or 23 miles east of Kansas City, Missouri.

The station clerical force subject to the scope and operation of the Clerks' Agreement consists of

General Clerk—\$13.82 per day—9 A. M.-1 P. M.; 2 P. M.-6 P. M.  
Rest days Saturday and Sunday

Station Helper—\$11.42 per day—4:30 P. M.-8:30 P. M.; 9:30 P. M.-  
1:30 A. M. Rest days Saturday and Sunday.

Prior to September 14, 1953, the duties of the General Clerk consisted of—

Check yard  
Compile and complete yard check report, Form 6793  
Compile Report Form 6750

day are on duty during all of the general clerk's hours except 3:30 P. M. to 5:00 P. M. If the general clerk were doing ticket clerk work during the agent-telegrapher's and telegrapher's hours, he would be taking over, without authority, work belonging to another craft.

We believe the Employees are well aware that this Carrier has made adjustments in rates where a substantial amount of higher rate work is assigned and that it is not our custom to split up a day's compensation by allowing two or more rates for periods during the day when two or more types of work normally done on the full day basis at different rates are assigned on a single position. This, of course, does not mean that there is any rule support or justification for establishing on a lower rated position a higher rate of pay when an insignificant amount of higher rated work is assigned to be performed during less than twenty percent of the incumbent's tour of assigned hours.

The significant facts to keep in mind in this case are these:

1. There was no new position involved; therefore, there was no requirement to make comparison with any other position on the railroad.

2. Even if the claimant's position was a newly established one, it would not be at all comparable to the position of ticket clerk at Sedalia with which the Employees undertake to make comparison. The duties of the ticket clerk at Sedalia are as follows, as specified in Bulletin No. 37 of 4-22-53, advertising this position for bids:

"Handle ticket sales and related work."

The Employees themselves list in letter of December 28, 1953, Carrier's Exhibit "I," the duties of the claimant's general clerk position prior to September 14, 1953. If you will add to this list ticket selling work as necessary between 3:30 P. M. and 5:00 P. M. and then compare with the duties of the ticket clerk at Sedalia, it is immediately apparent that these two positions are not comparable; there is no significant analogy between them.

3. This claimant was not assigned to a higher rated position; there was no such position at Lee's Summit. The clearly established fact is that he merely had assigned to him between 3:30 P. M. and 5:00 P. M. some ticket work which was not previously being done by anyone at that station. This work was not a part of the assignment of any position; it is clear the claimant did not assume the duties and responsibilities of any position when he performed it.

In view of these clear facts, it is the position of the Carrier that nothing in the rules cited by the Employees or in any other rules of the Agreement supports their contentions in this case and no Agreement authority exists for a sustaining award.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts in this case are not in dispute.

Prior to September 14, 1953 the duties of General Clerk position were to "Check freight, handle general station reports and related work." The position did not require the selling of tickets or the handling of cash. On the date stated the duties of the General Clerk position were changed to include the selling of tickets. Carrier states that this additional work was assigned for a specific period, 3:30 P. M. to 5:00 P. M. Petitioners allege that the new duties may occur at any time during the tour of duty, in that, telephone inquiries are made relative to information regarding tickets and general passenger transportation information and the General Clerk must have the

knowledge to impart such information, thereby the number of tickets sold per day may not be indicative of the amount of work involved. Therefore, the rate of pay should be adjusted as claimed, citing Rule 31(a).

Respondent Carrier contends this rule does not apply on the theory that there is no new position involved.

Cited with Rule 31(a) and (c) are Awards 1314, 1861; also awards 2270, 2785, same parties and the same rule in a prior agreement. Also cited is Award 6255. It is stated in Award 751:

"The assignment of the three hours' work to a lower-rated employe was a violation of the intent of Rules 66, 68 and 76. The negotiated rates covering positions of course took into consideration the attendant duties, and if after agreeing upon the rates the carrier could switch the duties around in this manner, it could completely nullify the wage scale.

The four-hour line of demarcation between class 1 and class 2 employes provided by the scope rule has no bearing in the matter. If it were permissible to parcel out regularly three hours as here, no reason is perceived why it could not also be permissible to assign the whole eight hours out to three lower-rated employes in allotments of three, three, and two hours and thus procure the doing of work agreed to be worth \$5.39 per day for \$4.79."

On behalf of Carrier it is asserted that the only time Claimant sells tickets is the time the telegrapher is off duty, 3:30 to 5:00 P. M. and it is alleged that it is safe to assume no work is done on tickets except during that period of time. Award 6359 is cited on the proposition of positive proof to substantiate allegations made. Also that reduced to essentials this claim demands an automatic upward adjustment of the rate of pay. That Rule 31(c) second paragraph applies only to temporary assignments, and here there is involved a permanent assignment. Cited are Awards 4439 and 5934. On new positions Carrier cites Award 4036 and states that such is not the case here. Also Award 6636.

We believe that this claim should be sustained to the extent of the time actually spent in ticket selling work may it be 3:30 to 5:00 P. M. and also at other times during the tour of duty when this additional work is shown to have been done on the authority of Rule 31(c) which reads in part:

"while occupying such positions";

**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 Employes involved in this dispute are respectively carrier and employes 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 violated as limited by Opinion.

#### AWARD

Claims 1 and 2 sustained to the extent limited by Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 15th day of April, 1955.