

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

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, January 16, 1954, it utilized Clerk R. W. Lodderhose, Recheck Clerk, seniority date June 16, 1942, to work authorized overtime in the Interline Division, Auditor Freight Receipts, Group 7, to perform clerical work consisting of placing divisions on received interline abstracts, and failed and refused to utilize a senior available qualified clerk entitled to the work, L. A. Neal, whose seniority date is September 26, 1923;
2. Clerk L. A. Neal shall be reimbursed for wage loss sustained, eight hours at punitive rate of \$3.10 per hour account Carrier's action in violation of the Agreement--Seniority rules and Overtime Rule 25 (b) of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Auditor Freight Receipts Office of the Missouri Pacific General Offices Accounting Department is one seniority district and roster of Class "A" and "B" employees and a Machine Operators' separate seniority district and roster as provided for in Rule 5, page 26 of the Clerks' Agreement and it consists of several sub-divisions, such as Recheck Division, Interline Division, Revising Division, Government Division, Transit Division, Local Division, Company Material Division, Statistical Division, Missouri-Illinois Division, Station Relief Claims (Adjustment Division), et cetera, and miscellaneous clerical positions not attaching to any specific sub-division.

There are approximately 290 employees in the Auditor Freight Receipts Office subject to the scope and operation of the Clerks' Agreement.

The Recheck Division located on the Sixth Floor of the Missouri Pacific General Office Building consists of a Supervisor and Assistant Supervisor, both subject to the provisions of the Clerks' Agreement (the Supervisor is restricted from the seniority rules of the Agreement) and approximately 42 Recheck Clerks, rate \$16.54 per day, and other clerical positions of miscellaneous classification, all of whom are subject to the provisions of the Clerks' Agreement.

yield its prerogative to judge qualifications for the efficient performance of its work because of unfounded charges of the Employees.

That the Carrier has been supported in this position is evidenced by Awards 5238 and 6489 rendered in connection with disputes between these same parties, as well as other awards on other carriers referred to *supra*. In these two awards the decisions are clear-cut as to the prerogative of management to judge qualification so long as the exercise of judgment is not arbitrary. The Employees are undoubtedly aware of this and we think it is significant that they have injected into this case, as they did in the other two, the charge of discrimination without any defined or apparent foundation—without describing or identifying anything that would give substance to the accusation. The fact is that the supervisor did not select this claimant for the work because it was his unbiased opinion that he could not render the service required. The Carrier's operations would be seriously handicapped if this prerogative of management were restricted or removed and we think your Board has, itself, ruled that it does not have authority to do so.

It is the position of the Carrier that there is no Agreement authority for the allowance of this claim because the claimant lacked necessary qualification for the work and there was no discrimination or prejudice in the judgment of the supervisors who made the decision.

Without prejudice to our position maintained through the handling of this case, the Carrier protests, in any eventuality, any punitive payment award being rendered in this dispute.

(Exhibits not reproduced)

OPINON OF BOARD: The circumstances herein are identical to those involved in our Award No. 7091 and decision herein is governed thereby.

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

The agreement was violated.

AWARD

Claim sustained at pro-rata.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.