

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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, January 23, 1954, it moved regularly assigned Receiving-Check Clerks from their bulletined and established location and station and warehouse platform facility to another location and station and warehouse platform facility, on an assigned work day, as follows:

A. Barfield moved from Miller Street Station to 7th Street Station

A. Brown moved from Miller Street Station to 7th Street Station

T. V. O'Brien moved from Miller Street Station to 7th Street Station

W. Carver moved from Miller Street Station to 7th Street Station

B. Coatney moved from Miller Street Station to Gratiot St. Station

G. Cashion moved from Miller Street Station to Gratiot St. Station

H. Black moved from Miller Street Station to Gratiot St. Station

A. Sowa moved from Miller Street Station to Gratiot St. Station

thus requiring these Clerks to suspend work on their regular assigned positions and location, during working hours, in violation of Rules 8, 24 and 25 (f) and related rules of the Clerks' Agreement.

2. Clerks Barfield, Brown, O'Brien, Carver, Coatney, Cashion, Black and Sowa each shall be paid additionally a day on January 23, 1954 at the pro rata rate of Receiving-Check Clerk, amount \$14.48, account the Carrier

requiring them to suspend work on their regular assigned position on an assigned work day and go to another location and station to work as Receiving-Check Clerk, in order to absorb overtime of Clerks at the Station where moved, violation Rules 8, 24, 25 (f) and related rules of the Clerks' Agreement.

3. Receiving-Check Clerks M. W. Miller, A. F. Rutherford, J. W. Rohr, G. I. Brown at Seventh Street Station and J. J. Murray, R. J. Smith, L. E. Novak, R. J. Vien at Gratiot Street Station shall each be compensated for eight hours at \$2.715 per hour, amount \$21.72, account the Carrier moving Receiving-Check Clerks (Claimants named in "2" hereof) from their established and assigned position and location on an assigned day to work same to Seventh Street Station warehouse facility and Gratiot Street Station warehouse facility in lieu of utilizing these Claimants who were off duty on their rest day and who were available for service, in violation of Rules 8, 24, 25 (b), 25 (f) and related rules of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad has for many years maintained in the City of St. Louis, Missouri, separate and distinct freight stations and warehouse platform facilities and at each such facility a force of station employees such as General Foreman, Warehouse Foreman, Assistant Warehouse Foreman, Route Clerks, Receiving Clerks, Check Clerks, Delivery Clerks, Sealer and warehouse platform laboring force, such as Pickers, Stowmen, Callers, Truckers, etc. have been employed and these stations, all of them, have been subject to the jurisdiction and supervision of one Station Agent with Assistant Agents, Chief Clerk, etc. at each station.

Prior to about January 1, 1952 and during the period of Agreements between the Carrier and the Clerks' Organization, going back to the time of the National Agreement effective January 1, 1920, the Carrier maintained **three separate and distinct freight warehouse and platform facilities** and platform clerical and laborer force at each separate station and facility and location, namely:

1. Seventh Street Station—St. Louis, Missouri, at which station the Agent's force and part of the Local Freight Station office clerical force was located;

2. Biddle Street Station—Near Third Street, St. Louis, Missouri, at which station and warehouse platform facility there was employed a Warehouse Platform Foreman, Assistant Foreman, Receiving Clerks, Delivery Clerks, Check Clerks, etc., and a warehouse platform laborer force such as Stowmen, Pickers, Truckers, etc.

3. Gratiot Street Station—At Main and Gratiot Streets, St. Louis, Missouri, where a part of the Agent's office clerical force was located and there was employed also Warehouse Platform Foreman, Assistant Foreman, Receiving Clerks, Delivery Clerks, Check Clerks, etc. and a warehouse platform laborer force such as Stowmen, Pickers, Truckers, etc.

It can be correctly stated that a sizeable force subject to the scope and operation of the Clerks' Agreement was maintained at each of these freight stations and warehouse platform facilities through the years.

On or about July 8, 1938, in accordance with the provisions of a mutual Agreement of the parties, Biddle Street Station freight warehouse facility became known as the "Universal Carloading and Distributing Company" facility and was thereafter used as the carloading and freight forwarding warehouse platform facility of the freight forwarding company who maintained its own office force in the building located near one end of the warehouse platform and the employees of the freight forwarding company on the freight warehouse platform were taken over as provided for in the Agreement of July 8, 1938 and dovetailed as to name and seniority date with the names and seniority dates of Missouri Pacific employees listed upon the

the working schedule agreement. Such 'shifting' will, however, as stated to you in our conference, be held to a minimum and only done when the exigencies of the service demand such changes."

The Dupo situation was again taken up in February 1946 and this time the dispute was terminated by Mr. Roll writing Mr. Thomas on March 7, 1946 as follows:

"As result of your letter of February 16, 1946, we discussed in our conference on March 5 the question as to the manner in which bulletins are issued covering various clerical positions at Dupo, Illinois.

Our understanding of the complaint is that it resolves chiefly around the issuing of bulletins to show the location for the particular position, and the heading '. . . and elsewhere as needed.'

Our further understanding is that you do not take the position that employes may not be required to work at locations, within the Dupo Terminal, other than those shown in the bulletin when that is necessary to meet the exigencies of the service.

With that understanding, we told you that we would arrange to have eliminated from future bulletins the additions to the location of the words '. . . and elsewhere as needed.'

The file contains no response to this letter and there is no record of any further handling on the part of the Organization which indicates acceptance of the Carrier's position that transfer within the same seniority district for performance of the same kind of work at the same rate of pay is not a violation of the Agreement.

Of course, the instant case differs from the Dupo case in that it is backed by a well established practice and the claims are based on certain rules and contentions not advanced in the handling of the dispute at Dupo.

It is the position of the Carrier that the Employees have failed to establish any Agreement violation in this case and the rules cited do not support the claims.

(Exhibits not reproduced)

OPINION OF BOARD: The locale of the instant dispute is identical with that which the Board was concerned with in Awards 7223 and 7224, except the facilities involved are the Miller Street Station, Gratiot Street Station and the Seventh Street Station, and the claims involve the alleged improper transfer of named claimants from the Miller Street facility to the Seventh Street and Gratiot facilities to perform work which Petitioners assert was properly performable only by a group of named employes who on the day and date in question were off duty on their rest day.

The issue here is properly subject to resolution under the principles laid down in Awards 7223 and 7224, decided this date. We held in those cases that the Petitioners failed to sustain the burden of proving a violation. The evidence here presented is substantially the same as that presented in Awards 7223 and 7224, and, for the reasons set forth in those Awards, requires a similar finding.

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 for the reasons set forth in the Opinion, the facts of record do not justify an affirmative award.

AWARD

Claims 1, 2 and 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 2nd day of February, 1956.