

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, 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 Central 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 Supervisory or Exclusive Agent Mr. E. Morris encroached upon the Clerks' Agreement and took freight bills and went to United Service Company's place of business at Monroe, Louisiana, March 22, 1954, and collected freight charges and turned the collections over to the Cashier;

2. Revising Clerk E. V. Hunt, rate \$15.38 per day, to whom the clerical work here involved was regularly assigned, shall be paid one hour at the pro rata rate of \$1.92, account Carrier's action in violation of Scope Rule 1 and other related rules of the Clerks' Agreement.

Note: Claim as originally filed for one hour at punitive rate of \$2.88, was revised by the General Chairman during discussion in conference with the Personnel Department on July 20, 1954, to one hour at the pro rata rate of \$1.92 per hour.

EMPLOYES' STATEMENT OF FACTS: In the Carrier's Local Freight Office at Monroe, Louisiana, it maintains a station clerical force, subject to the scope and operation of the Clerks' Agreement, which consists in part of:

Chief Clerk	Rate \$16.46
Cashier	16.16
Accountant	16.16
Revising (Rate) Clerk	15.38
Claim Clerk	14.96
General Clerk	14.60

On the claim date, March 22, 1954, while the Traveling Auditors were at Monroe to make a check of the Local Freight Station, it developed that several freight bills were on hand and, uncollected, covering freight shipments which

Here is a situation in which an audit of the station accounts was in progress and there were some outstanding bills involved. A clerk had applied to the patron for payment but the necessary funds were not available. The agent wanted to have his accounts up to date in the audit report and simply went out and made the collection himself. A clerk could have been sent to make the collection without any additional compensation; he lost nothing by reason of not having been required to do so. The clerk might have failed a second time to get the money. We think it would be stretching sound principles beyond any reasonable conclusion to say that an agent who is himself responsible for the collection could not proceed to make same in circumstances of this kind, regardless of what proportion of the collection work had been performed by clerks in the past. We hold there was never any meeting of minds of the makers of this Agreement that it would impose any such handicap and restriction upon the agent in getting work for which he is responsible done. The assignment of collection duties to clerks who perform by far the greater proportion of such work certainly did not estop the agent, for whose benefit the clerical positions were established, from ever again making a collection himself.

A third phase of the Carrier's position in this dispute is that there is no provision in the scope rule or any other rule that specifies any penalty that would be required to be paid even if this action on the part of the Carrier should be held to be a violation of the Agreement. Your Board has promulgated a principle in such circumstances; it is stated in Awards 1608, 4105, 4291, 4325, 4739 and others to the effect that when there is a violation of a rule that does not specify the measure of damages, the amount will be that which would have been earned if there had been no violation. If the work here involved had been actually covered by the scope of the Clerks' Agreement and a clerk had performed it, no one at Monroe would have received a dime more of compensation than he actually did receive.

It is therefore the Carrier's position in this dispute that

1. the practice has been for agent to make collections of this kind and the work is not exclusively that of clerks.
2. even if clerks had been doing this work exclusively it did not constitute a complete estoppel with respect to the agent, on occasion, doing such work for which he is responsible in the first place.
3. even if the agent's action is held to be a violation of the agreement, payment of the claim is not required because no penalty is specified and there was no loss, and
4. an award cannot be properly made unless the Order of Railroad Telegraphers is made a party to the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 22, 1954 there were on hand in the Monroe, La. local freight office several uncollected freight bills due the Carrier from the United Service Company. A traveling auditor was checking the station accounts on that date, and in order to have the accounts complete, the Cashier called United Service and requested payment. He was told that if he would send someone to the Company's place of business, payment would be made immediately. The station agent took the bills to United Service Company and made the collection.

Claim is made that the collection of these bills was work covered by the Clerks' Agreement and belonged to Revising Clerk Hunt, who was on duty and working at the time. One hour's pay at pro rata rate is claimed by Hunt because of the alleged violation.

The basis of the claim is that the station agent is outside the scope of the Clerks' Agreement and that his action in collecting the bills removed work belonging to clerks out from under the Agreement in violation thereof. There are numerous awards of this Division, many of them cited in this case, to the general effect that work belonging under an agreement to one class or craft cannot be delegated to others not covered by the Agreement. This proposition is not here in dispute. The question with which we are faced is whether the work in question did in fact belong to clerks under the terms of the Agreement.

At the outset, it must be said that the question cannot be determined by reference to the provisions of the Agreement alone. The parties have not defined the coverage of the Agreement in terms of work, but in terms of positions. In such a case, the work covered by the Agreement is said to be the traditional and customary work performed by the employees assigned to the positions set forth in the Agreement. Thus, it is necessary to rely upon evidence outside of the Agreement itself in order to determine whether the work in question has been reserved traditionally and customarily to the positions covered by the Agreement. The burden of producing such evidence is upon the claimant, who alleges that the Agreement has been violated.

The submissions are long and contain too much factual material to be repeated here. Essentially however, it appears that as recently as 1940, the Carrier did not deliver freight directly to the consignee's door, but had it delivered by independent contractors. The freight bills were collected by these contractors and by the cashier. The agent collected delinquent bills after the cashier had called several times and failed to collect. At some time after 1940, the Carrier began delivering to the door and it became the duty of the Vehicle Clerk who made the deliveries to collect bills which were on a cash basis; credit bills were collected by the cashier.

In the case of Sears Roebuck, which was on a cash basis, it developed that the Vehicle Clerks were spending too much time in making collections. In order to correct this situation, it was arranged that the Vehicle Clerks would merely get the bills approved by Sears' receiving clerk and turn them over to the cashier, who would send all bills every Friday to Sears' cashier for collection. Shortly before August, 1953, because of a new receiving clerk at Sears, a situation developed whereby the Vehicle Clerks could not get the bills approved promptly, but would have to return several times during a day in order to get them. At this point, according to the statement of Cashier Tillman, "When I got on the vehicle clerk about the collections being delayed he told the agent whenever there was a delay and Mr. Morris (the agent) would go to Sears, pick up the payments, give them to the vehicle clerk who gave them to me in his regular settlements."

After this practice had been in effect for about 15 days, Division Chairman Williams learned of it and complained that this work should not be done by the agent but by a clerk. The agent then told the Chief Clerk to assign the work to a clerk and the Chief Clerk assigned the function to the Claimant.

It does not appear that any problem similar to that at Sears had ever arisen at United Seervice. Prior to the incident involved in this claim, no one had ever had to go there to collect delinquent bills. Claimant had not been assigned any duties in connection with United Service. Apparently, on occasions when United Seervice did not have the payment ready for the vehicle clerk who made the delivery, he returned the bill to the cashier and the Company mailed in the payment. On the day in question, the Cashier had on hand several such unpaid bills for which the remittance had not been made although he had called the Company about it several times.

Based on these facts and the record as a whole, we do not feel that Claimant has sustained his contention that collecting bills under the circumstances of this case was a function traditionally reserved to clerks to the exclusion of the agent. The problem of collecting bills from cash customers who

did not pay at time of delivery appears to be of recent origin and very limited applicability. It apparently existed as a regular thing only with regard to Sears Roebuck, and various methods of solving the problem were tried. First the vehicle clerks had the bills approved and turned them over to the cashier for collection. When this did not work, the agent began to collect the bills from Sears personally, continuing to do so for about 15 days. In August or September of 1953, upon request of the Chief Clerk, this function was assigned to Claimant. No arrangement for delay in payment of bills, or for picking up payments when they became overdue had ever been made with United Service Company, similar to the one worked out at Sears. The collection of the bills on the day in question was occasioned entirely by a situation not ordinarily met with during the routine operation of the office. Bills were overdue from United Service, which was not the usual situation, and they happened to be overdue on the day the accounts were being checked. If the accounts were not being checked on that day, it is clear that no one would have been sent to collect the bills. It was not a part of Claimant's assignment.

The collection of delinquent bills under certain circumstances has been accomplished by the agent and under other circumstances has been accomplished by clerks. The need for personal collections of the nature involved in this claim has been limited to Sears Roebuck, and the procedure for collection there was worked out over a period of time to meet the special circumstances which arose at that store. Under the circumstances of this case, we cannot hold that the assignment to a clerk of the collection of bills at Sears Roebuck supports the conclusion that only clerks could be used to make the collection in this case. We do not think it has been established by this record that the work in question is covered by the Clerks' Agreement to the exclusion of the agent. Therefore, we find no violation of the Agreement.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.