

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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 System Committee of the Brotherhood that:

1. Carrier violated the Clerks' Agreement when it removed a portion of clerical work out from under the scope and operation of the Clerks' Agreement and required the Car Foreman at Poplar Bluff, Missouri to take over and perform this clerical work which had previously been assigned to and was customarily and traditionally performed by employees covered by the scope and operation of the Clerks' Agreement, in violation of the provisions of Rules 1, 2, 3, 5, 25 and related rules of the Clerks' Agreement.

2. The Carrier shall be required to compensate Clerk Mrs. Tommye Richardson for three hours at the punitive rate of \$3.60 per hour, amount \$10.80 per day, for each of the following dates:

April	2, 3, 6, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29 and 30, 1959, or 21 days @ \$10.80	\$226.80
May	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1959, or 21 days @ \$10.80	226.80
	Total	\$453.60

with claims continuing for claimant or her successor or successors, for each work day, Monday through Friday, that these violations occur, until the claims are satisfied and the violation of the Clerks'

Agreement is discontinued and the clerical work here involved is returned to the scope and operation of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: Poplar Bluff, Missouri, is the Division point on what is known as the Carrier's Missouri Division, and it is the Division Superintendent's headquarters. It is located approximately 170 miles south and west of St. Louis, Missouri, and approximately 180 miles north and east of Little Rock, Arkansas.

For many years prior to October 1954, the Carrier maintained a clerical force in the Mechanical Department and in the Supply Department at Poplar Bluff, Missouri. It also maintained clerical forces in the Superintendent's office, Passenger Station, Freight office and Yard office.

On September 24, 1954, a Memorandum of Agreement was executed by the parties at the request of the Carrier, copy of which is attached, designated as Employees' **EXHIBIT "A"**. By referring to that Memorandum of Agreement, it will be noted the clerical force in the Mechanical Department at Poplar Bluff at that time consisted of —

- 1 Day Roundhouse Clerk, rate \$13.88, assigned hours, 12 Noon to 9 PM, meal period 5 PM to 6 PM, a seven day per week assignment, rest days Saturday and Sunday. This Clerk worked from 12 Noon to 5 PM as Car Clerk and from 6 PM to 9 PM as Roundhouse Clerk.
- 1 Steno-Clerk, rate \$13.88, assigned hours 7 AM to 4 PM, meal period 12 Noon to 1 PM, a five day per week assignment, unassigned or rest days, Saturday and Sunday.
- 1 Night Roundhouse Clerk, rate \$13.76, assigned hours 10 PM to 7 AM, meal period 2 AM to 3 AM, a seven day per week assignment, rest days Tuesday and Wednesday.
- 1 Rest Day Relief Clerk — This clerk was assigned to relieve as follows:

Saturday and Sunday	Roundhouse Clerk, 12 Noon to 9 PM, rate \$13.88
Monday	PBX Operator, 8 AM to 5 PM, rate \$12.70,
Tuesday and Wednesday	Roundhouse Clerk, 10 PM to 7 AM, rate \$13.76

Rest days, Thursday and Friday.

The Recitals stated that all of those positions had duties involving the handling of Enginemen's crew board, calling crews and related work. In addition to the duties set out in the Recitals, including handling of Enginemen's crew board and calling crews, the occupants of those positions had various Mechanical Department reports to make, such as —

Day Roundhouse Clerk "Check rip track and make switch list; compile 6788 A&B, 3301 grain car report, daily record ice furnished individual passenger

to this dispute did not ever agree to any such construction; there is nothing in the agreement to support a conclusion of that kind.

There are several principles covered in the Carrier's position which have been supported in past awards of this Division, those being:

- (a) Claim is not properly before the Board because of failure of the Employee to present the claim as prescribed in Article V, paragraph (a), of the August 21, 1954, Agreement.
- (b) Work remaining from an abolished clerical position may be properly assigned to non-covered employees so long as the work is incident to their assigned duties.
- (c) Claim must be limited to the pro rata rate of pay when no work was performed by the claimant.
- (d) Monetary claim must be limited to the loss suffered.

The Carrier respectfully requests that the Board dismiss this claim as not being properly before the Board. However, in the eventuality that the merits of this claim are considered, the Carrier requests that the Board adhere to the policies set out in the awards cited by the Carrier and deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim in which Mrs. T. Richardson alleges Carrier violated the Clerks' Agreement by assigning to Car Foreman work which was reserved exclusively to clerks by their Scope Rule.

Carrier made a succession of changes and consolidations which affected the clerical work. The abolishment of two positions in the Supply Department resulted in the transferring of the clerical work to the Mechanical Department at Poplar Bluff, Missouri in the General Manager's Southern District on January 6, 1956. Since only one Roundhouse Clerk was employed, the position of Material and Supply Clerk was created in the Mechanical Department to handle the additional work. However, on March 20, 1957 one of these positions was abolished. In the course of further reorganization, Carrier on April 1, 1958 eliminated the position of Material Supply Clerk and established a new position of General Steno Clerk in the Road Master's Mechanical Office as well as duties attached to the Car Foreman's Office.

Claimant Mrs. T. Richardson asserts that the clerical work assigned to the Steno-Clerk required more than eight hours a day and that the remaining three hours of clerical work was improperly assigned to the Car Foreman because he is outside of the scope of the Agreement.

Carrier urges that the claim be denied without consideration of the merits because of the failure of Petitioner to comply with the Time Rule as provided for in Paragraph A of Article V of the August 21, 1954 National Agreement. It maintains that the occurrence took place on April 1, 1958 when the clerk's position was abolished, but that the claim was not filed until June 1, 1959, a period far in excess of the sixty days allowed by Article V of the National Agreement. Claimant counters that the violation is a continuing one; and as such, the claim may be filed at any time under Section 3

of Article V of the National Agreement although the claimed reparation is limited to sixty days prior to the filing date.

Our review of the numerous awards concerned with the time limit issue distinguished between a continuing claim and a non-continuing claim largely on the basis of whether the violation is performed repeatedly or is a single and final act which occurs on a specific date such as removal from a seniority list or the abolishment of a position and transfer of work to an employe of another class. The awards involving abolishment of a position and transfer of work to another class, as Award No. 10532, hold that such a violation is not of the continuing type. In the case at bar, Carrier abolished the position of Material and Supply Clerk on April 1, 1958 and transferred work to the Car Foreman. The abolishment of the position took place on that date; and if there was a violation, it occurred then and only then.

Of the awards cited by Claimant to sustain his position that the instant dispute involves a continuing claim, none are comparable in facts. Awards No. 1494 and 1495 do have some similar facts but are not to the point because the claims did not stem from the abolishment of a position on a specific date.

We hold that the violation is not a continuing one; therefore, the claim is barred because it was not filed within sixty days after the date of the occurrence. Under such circumstances we do not find it necessary to discuss the merits of the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1964.

LABOR MEMBER'S DISSENT TO AWARD 12045, DOCKET CL-12072

The Majority committed serious and grievous error in this award through its conclusion that Carrier's violation of the parties' collective agreement was not one which continued. This Division of the National Railroad Adjustment

Board has had before it many disputes involving claims similar to that of the Petitioner here which have been considered and decided upon their merits and, with but few exceptions, this Division has treated all such cases as involving alleged continuing violations of the parties' agreements, subject to handling under Section 3 of Article V of the August 21, 1954 National Agreement. The decision of the Majority in this particular case constitutes a radical departure from prior awards of this Division and does considerable violence to the terms, spirit and intent of the August 21, 1954 National Agreement.

The claim of the Petitioner decided in this award was not predicated upon Carrier's action in abolishing the position of Material and Supply Clerk. It was, instead, concerned with Carrier's violation of the agreement in removing clerical work from the scope and operation of the clerical agreement and requiring other than clerical employees to perform that work. The claim of the Petitioner was properly subject to handling under Section 3 of Article V of the August 21, 1954 National Agreement.

Award 10532, upon which the Majority relied to support this erroneous decision, was fraught with serious error as was adequately pointed out in the dissent to that award.

Subsequent Award 10644, which dealt with a similar violation of a clerical agreement as was dismissed in this instance, makes clear that the "purpose of the Time Limit Rule is to provide for the expeditious handling of claims, not to fasten upon the parties a system wherein a single lapse can produce continuing or repeated injustices thereafter." Award 10644 further points up some of the absurd results which could obtain from application of the Time Limit Rule such as have occurred in the instant decision of the Majority.

For these reasons, and others, I most vigorously dissent.

D. E. Watkins

D. E. Watkins, Labor Member
2-7-64