

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated and continues to violate the Rules of the Clerks' Agreement at Douglas, Arizona, when, effective December 8, 1958, it assigned certain car demurrage work to Telegraphers, employees of another class or craft, located in a separate office; and

(b) That the involved car demurrage work be restored to the scope and operation of the Clerks' Agreement; and,

(c) That Chief Clerk W. C. Fenderson be compensated under the provisions of Rule 21, three and one-half (3½) hours at the rate of time and one-half for December 8, 9, 10, 11 and 12, 1958 (Monday through Friday), and eight (8) hours at time and one-half for December 13 and 14, 1958 (Saturday and Sunday), and on the same basis for each and every day and date thereafter until the Agreement violation is corrected.

EMPLOYEES' STATEMENT OF FACTS:

1. There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which Agreement (hereinafter referred to as the Agreement) is on file with this Board and by reference thereto is hereby made a part of this dispute.

2. Douglas, Arizona, is situated on Carrier's Rio Grande Division, approximately 216 miles west of El Paso, Texas. At the inception, this operation consisted of a separate freight station, passenger station and yard office, all a part of the El Paso & Southwestern Railroad until acquired by the Carrier sometime during November, 1924, and made a part of the Rio Grande Division.

to penalty claims at the overtime rate of pay, that the contractual right to perform work is not the equivalent of work performed and has declined to sustain such claims—see this Division's Awards 7094, 7222, 7239, 7242, and 7316, to cite but a few.

CONCLUSION

The claim in this docket is entirely lacking in either merit or agreement support and Carrier requests that if not dismissed, that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Here some of the clerical duties involved in the work of keeping car demurrage records were assigned to telegrapher-clerks. They had previously been performed on an overtime basis by the Chief Clerk (Claimant), a position covered by the Agreement in evidence. No covered clerical positions were abolished. The action was taken by the Carrier because of a decline in business at Douglas, Arizona, and the consequent need to fill out the idle time of the telegrapher-clerks on the first, second and third shifts.

The Petitioner has shown that car demurrage work at Douglas was performed exclusively by the Clerks for a period of some thirty-five years. Thus, it asserts, the work belongs exclusively to the Clerks and may not, therefore, properly be removed from the Clerks' Agreement and performed by others not within its coverage. (Awards 180, 413, 637, 751, 1209, 1771, 2051, 2071, 2506, 2701, 3275, 3587, 3932, 3955, 4160, 5196, 6101, 6600, 7187, 7216, 7409, 7889, 8024, 8289, 8330, 8658, 8751).

The Carrier defends by citing and relying upon Awards 615 and 6269, both involving these same parties, where, among other things, the Board held that employees holding rights under Clerks' Agreements do not have the exclusive right to perform all clerical duties; that Telegraphers may be assigned clerical duties to fill out their time; and (Award 6269) under the general Scope Rule of this Agreement the covered employees are not granted an exclusive right to perform clerical duties not particularized or described by that rule. It also emphasizes that as a matter of historical practice on the property, Telegraphers have customarily and necessarily been required to perform clerical work incident to their other duties.

In the opinion of the Board, the defenses raised by the Carrier cannot prevail against the Petitioners' proof of a prevailing practice of long duration, under which the particular work in dispute was assigned to and performed exclusively and uninterruptedly by covered employees. It is also clear that the work in this case is brought to the telegrapher-clerks by members of the clerical force and that after performing their part, it is returned by the telegrapher-clerks to the location occupied by the clerks. Award 636, modifying the broad findings of Award 615, laid down the principle that where covered clerical duties are assigned to telegraphers in order to fill out their time, the work so transferred must arise at or immediately adjacent to the post of the telegrapher. We have also held that it must be incidental to a telegrapher's regular duties. (Cf. Award 2138) In this case the car demurrage work cannot be considered incidental to (or even remotely connected with) the duties of a telegrapher nor does it arise at or immediately adjacent to the telegrapher's post. Therefore, under the facts of record here, the conditions limiting the Carrier's right to transfer covered clerical work to telegraphers, as set out in Award 636, are applicable and have not been met.

Award 6269 is clearly distinguishable on its facts. There certain clerical positions were abolished and some of the work formerly performed thereunder was returned to the telegrapher-clerks. Here no clerical positions were abolished and the work involved, according to the record, had been performed exclusively by the covered clerks for some thirty-five years.

In view of the foregoing, the claim is valid and will be sustained. Claimant is entitled to receive what he would have been paid under the Agreement had he been permitted to continue to perform the work. (Awards 9419, 9436).

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.

DISSENT TO AWARD 12422 DOCKET CL-11933

The award in this case is in error in two fundamental respects:

First, it accepts custom, tradition and practice at only one point on the railroad, viz. Douglas, Arizona, as controlling, ignoring the fact that the Agreement is systemwide in its application and that the Petitioner is required to prove practice throughout the system if it is to prevail. This proposition has long since become axiomatic by the awards of this Division, many of which were cited to the Referee here, including some of his own authorship.

Second, the award is in error in that it is based on a reliance on two early awards which are clearly not in point here, viz. Awards 636 and 2138.

Award 636 dealt with a situation where a clerical position was abolished and a telegrapher was directed to report at the freight station one mile away from his assigned position in the yard office to handle the clerical duties of the abolished position. Award 2138 was a denial award holding the clerical craft had no valid claim to a position of checking the handling of the carrier's cars and business on a foreign carrier's sidings at coal mines, even though some incidental clerical work was involved.

The award here is based on a totally different factual situation. There was no clerical job abolishment involved, nor was the telegrapher here required to leave his assigned post to perform the work in dispute.

For these reasons, we dissent.

D. S. Dugan
P. C. Carter
W. H. Castle
T. F. Strunck
G. C. White