

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, 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 (GL-4940) that:

1. Carrier violated the Clerks' Agreement when, effective May 1, 1960, it unilaterally transferred certain Maintenance of Way, Station, Yard and Superintendent's payroll work into the Data Processing Center of the General Accounting Office at St. Louis, Missouri, on the General Accounting Office seniority district, from the—

(1) District Accounting Office at Little Rock, Arkansas on the Southern District General Manager's seniority district; and

(2) District Accounting Office at Kansas City, Missouri, on the Western District General Manager's seniority district; and

(3) Agent's Office at East Little Rock, Arkansas, on the Arkansas Division Station and Yards seniority district; and

(4) Agent's Office at Kansas City, Missouri, on the Kansas City Terminal Station and Yards seniority district; and

(5) Agent's Office at St. Louis, Missouri, on the St. Louis Terminal Station and Yards seniority district,

without Agreement with this Organization to transfer said work across seniority district lines, thereby violating Rules 3, 5, 15, 16, 25 (b), 45, and related rules of the Clerks' Agreement.

2. Carrier violated the Clerks' Agreement when, effective June 3, 1960, it permitted Mrs. Catherine Oshel, Car Clerk at Wichita,

Kansas, on the Western District General Manager's seniority district and roster to transfer with her seniority to the General Accounting Office seniority district and roster in St. Louis, and exercise that seniority by displacing David C. Barnhard, System Per Diem Clerk in the Car Accountant's Office, St. Louis, Missouri, on the General Accounting Office seniority district and roster, St. Louis, without an Agreement with this Organization to do so, thereby violating Rules 3, 5, 15, 16, 25 (b), 45 and related rules of the Clerks' Agreement.

3. (a) Carrier shall compensate L. A. Brummer, Accountant in the District Accounting Office, Little Rock, Arkansas for 8 hours at the punitive rate of \$3.93 per hour, amount \$31.44 per day, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, total of 10 days, amount \$314.40.

(b) Carrier shall compensate O. B. McCoy, Accountant in the District Accounting Office, Little Rock, Arkansas, for 8 hours at the punitive rate of \$3.975 per hour, amount \$31.80 per day, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, a total of 10 days, amount \$318.00.

(c) Carrier shall compensate Miss Henry Lyle, Assistant Accountant in the District Accounting Office, Little Rock, Arkansas, for 1 hour, 30 minutes, at the punitive rate of \$3.8625 per hour, amount \$5.79, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, total of 10 days, amount \$57.90.

4. (a) Carrier shall compensate L. G. Sanders, Station Timekeeper in the District Accounting Office, Little Rock, Arkansas, for 8 hours at the punitive rate of \$3.71625 per hour, amount \$29.73 per day, for May 16, 1960, claims continuing for each work day until claims are allowed and the violation of Agreement is discontinued by transferring the work involved in this dispute back to the General Manager's Southern District seniority district.

(b) Carrier shall compensate Miss Myrtle A. Starnes, Assistant Accountant in the District Accounting Office, Little Rock, Arkansas, for 8 hours at the punitive rate of \$3.8625 per hour, amount \$30.90 per day, for May 16, 1960, claims continuing for each work day until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the General Manager's Southern District seniority district.

(c) Carrier shall compensate L. A. Brummer, Accountant in the District Accounting Office, Little Rock, Arkansas, for 1 hour, 30 minutes at the punitive rate of \$3.93 per hour, amount \$5.89, for May 16, 1960, claims continuing for each work day until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the General Manager's Southern District seniority district.

5. (a) Carrier shall compensate Katherine S. Dodd in the District Accounting Office at Little Rock, Arkansas, for difference between the Station Timekeeper position rate of \$19.82 per day, and the Bill and Voucher Clerk position, rate \$19.22 per day, amount

60¢ per day, for May 23, 1960, with claims continuing for each work day until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the General Manager's Southern District seniority district.

(b) Carrier shall compensate J. F. Hart, Jr., in the District Accounting Office, Little Rock, Arkansas, for the difference between the Assistant Accountant position, rate \$20.60 per day, and Statistical Clerk position, rate \$20.00 per day, amount 60¢ per day, for May 16, 1960, with claims continuing for each work day, until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the General Manager's Southern District seniority district.

(c) Carrier shall compensate Zetta Hammer in the District Accounting Office, Little Rock, Arkansas, for the difference between the Statistical Clerk position, rate \$20.00 per day and Comptometer Operator position, rate \$18.74 per day, amount \$1.26 per day, for May 30, 1960, with claims continuing for each work day, until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the General Manager's Southern District seniority district.

(d) Carrier shall compensate Ovea B. Huddle, in the District Accounting Office, Little Rock, Arkansas, for the difference between Statistical Clerk position, rate \$20.00 per day, and Comptometer Operator position, rate \$18.74 per day, amount \$1.26 per day, for May 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, 1960, total of 10 days, amount \$12.60.

(e) Carrier shall compensate Ruth Britt in the District Accounting Office, Little Rock, furloughed Clerk, for \$18.74 per day, for 5 days, May 16, 17, 18, 19 and 20, 1960, amount \$93.70, when she was deprived of work on Comptometer Operator position, rate \$18.74 per day.

6. (a) Carrier shall compensate C. L. Bandy, Chief Accountant in the District Accounting Office, Kansas City, Missouri, for 8 hours at the punitive rate of \$4.2244 per hour, amount \$33.80, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, total of 10 days, amount \$338.00.

(b) Carrier shall compensate Miss Mary E. Welsh, Assistant Accountant in the District Accounting Office, Kansas City, Missouri, for 8 hours at the punitive rate of \$3.75 per hour, amount \$30.00 per day, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, total of 10 days, amount \$300.00.

(c) Carrier shall compensate D. G. Heaton, Accountant in the District Accounting Office, Kansas City, Missouri, for 5 hours 30 minutes, at the punitive rate of \$3.8625 per hour, amount \$21.24, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, total 10 days, amount \$212.40.

7. (a) Carrier shall compensate Miss Agnes L. Weaver, Assistant Accountant in the District Accounting Office, Kansas City, Missouri, for 8 hours at the punitive rate of \$3.75 per hour, amount

\$30.00, for May 16, 1960, claims continuing for each work day until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the General Manager's Western District seniority district.

(b) Carrier shall compensate Miss Neva McFerren, Assistant Accountant in the District Accounting Office, Kansas City, Missouri, for 8 hours at the punitive rate of \$3.75 per hour, amount \$30.00, for May 16, 1960, claims continuing for each work day until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the General Manager's Western District seniority district.

(c) Carrier shall compensate C. L. Bandy, Chief Accountant in the District Accounting Office, Kansas City, Missouri, for 5 hours, 30 minutes at the punitive rate of \$4.224 per hour, amount \$23.23, for May 16, 1960, claims continuing for each work day until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the General Manager's Western District seniority district.

8. Carrier shall compensate Rose B. Herron, Payroll Statistical Clerk in the Agent's Office at East Little Rock, Arkansas, for 20 minutes at the punitive overtime rate of \$3.69375 per hour, amount \$1.23, for each date May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, amount \$12.30, with claims continuing for each work day for the claimant, her successor or successors, until the claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the Arkansas Division Station and Yards seniority district.

9. (a) Carrier shall compensate Leo E. Losche, Timekeeper in the Agent's Office at Kansas City, Missouri, for 20 minutes at the punitive rate of \$3.8825 per hour, amount \$1.29, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, amount \$12.60, with claims continuing for each work day for the claimant, his successor or successors, until the claims are allowed and the violation of Agreement is discontinued by transferring the work involved in this dispute back to the Kansas City Terminal Division Station and Yards seniority district.

(b) Carrier shall compensate Mrs. Oda T. Ferguson, Assistant Timekeeper in the Agent's Office, Kansas City, Missouri, for 20 minutes at the punitive rate of \$3.66 per hour, amount \$1.22 for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, amount \$12.20, with claims continuing for each work day for claimant, her successor or successors, until the claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the Kansas City Terminal Division Station and Yards seniority district.

10. (a) Carrier shall compensate George Gloeckler, Assistant Timekeeper in the Agent's Office, St. Louis, Missouri, for 30 minutes at punitive rate of \$3.638 per hour, amount \$1.819, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 31, June 1, 2, 3, 6, 9 and 10, 1960, amount \$52.75, with claims

continuing for each work day for the claimant, his successor or successors, until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the St. Louis Terminal Station and Yards seniority district.

(b) Carrier shall compensate Mrs. Dorothy J. Yuede, Assistant Timekeeper in the Agent's Office, St. Louis, Missouri, for 30 minutes at the punitive rate of \$3.638 per hour, amount \$1.819, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 31, June 1, 2, 3, 6, 7, 8, 9 and 10, 1960, amount \$52.75, with claims continuing for each work day for the claimant, her successor or successors, until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the St. Louis Terminal Station and Yards seniority district.

(c) Carrier shall compensate Robert N. Goetter, Assistant Timekeeper in the Agent's Office, St. Louis, Missouri, for 30 minutes at the punitive rate of \$3.638 per hour, amount \$1.819, for each date, May 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 31, June 1, 2, 3, 6, 7, 8, 9 and 10, 1960, amount \$52.75, with claims continuing for each work day for the claimant, his successor or successors, until claims are allowed and violation of Agreement is discontinued by transferring the work involved in this dispute back to the St. Louis Terminal Station and Yards seniority district.

11. (a) Carrier shall compensate David C. Barnhart, System Per Diem Clerk in the Car Accountant's Office, St. Louis, Missouri, for 8 hours at punitive rate of System Per Diem Clerk position No. 1626, of \$3.323125 per hour, amount \$27.58, for June 3, 1960, with claim continuing for each work day, until claims are allowed and Mrs. Catherine Oshel is removed from the General Accounting Office seniority district and roster.

(b) Carrier shall further compensate David C. Barnhart for the difference between 8 hours at the pro rata rate of System Per Diem Clerk position No. 1623, \$18.39 per day, and punitive rate of \$27.58 per day, amount \$9.19, for June 3, 1960, with claims continuing for each work day until claims are allowed and Mrs. Catherine Oshel is transferred from the General Accounting Office seniority district and roster back to the General Manager's Western District seniority district and roster.

EMPLOYEES' STATEMENT OF FACTS: On February 11, 1960, when the General Chairman was in conference with a representative of the Chief Personnel Officer on other matters, that Carrier representative presented the General Chairman with a draft of a proposed Agreement for the Organization to consider in negotiating a Memorandum of Agreement to enable the Carrier to carry out its desire to transfer certain Maintenance of Way, Station, Yard and Superintendents' payroll work into the General Accounting Office at St. Louis, Missouri, on the General Accounting Office seniority district, from the District Accounting Offices at Kansas City, Missouri and Little Rock, Arkansas, which offices are on the General Manager's Western District seniority district and the General Manager's Southern District seniority district respectively. Copy of the Carrier's draft of the proposed Memorandum of Agreement is submitted as Employees' Exhibit 1.

Claim for Clerk D. C. Barnhart at St. Louis (Item 11 of the Employees formal statement of claim) is totally without merit because Clerk Barnhart, when displaced by Clerk Oshell, the only employee who transferred seniority to St. Louis, exercised his seniority to an identical position with the same rate of pay (System Per Diem Clerk, \$18.39 per day) without any loss of time or wages.

All claimants on the Western District General Manager's roster and the Southern District General Manager's roster (Items 3, 4, 5, 6 and 7 of the Employees' formal Statement of Claim) continued to work. There is absolutely no basis for any claims for the period May 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1960, as there was no change whatever in the forces as a result of this rearrangement of work until close of work Friday, May 13, 1960. The only loss any of those claimants could have suffered subsequent to May 13, 1960, would have been the difference between the rate of their former position and the rate of a new position to which they may have moved because of displacements resulting from abolishment of positions directly related to this transfer of work.

Claims on behalf of employees in the Agents' Offices at Kansas City, Little Rock and St. Louis (Items 8, 9 and 10 of the Employees' formal Statement of Claim) are totally without merit because not one employee in those offices suffered any loss because of this transfer of work because there has not been any change in forces resulting from this transfer of work from those offices.

The Board has on numerous occasions held that claims must be limited to the loss suffered and without in any manner waiving our position with respect to the merits of these claims, it is our position that in any eventuality they must be limited to the actual loss suffered, and that the burden is upon the Employees to show that a loss has been suffered.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier proposed to transfer certain payroll work from several offices to a central point in St. Louis in order to utilize its IBM equipment more efficiently. Pursuant to Rule 16 (b), Carrier met with Organization to work out an Agreement regarding the employees affected. Rule 16 (b) reads as follows:

CONSOLIDATIONS AND DIVISIONS

* * * * *

"(b) When, for any reason, two or more seniority districts or portions thereof are to be consolidated or one is to be divided, reasonable advance notice will be given to the General Chairman and the apportionment of employees affected will be subject to conference and mutual agreement."

The meeting did not result in a complete Agreement, although they did reach an accord on all but one point in issue. Carrier, nevertheless, proceeded to make the transfer of work without the Agreement of the Organization. The Claim seeks to undo the transfers and to compensate the employees involved. It is the position of the Claimants that Agreement was essential and that, in its absence, Carrier may not proceed with proposed transfers.

The record indicates that Carrier made an eight point proposal to the Organization. The Organization, in turn, proposed a modification of point

6 which Carrier accepted and an additional proposal, point 9, part of which Carrier rejected. Point 9 proposed that Carrier pay all moving expenses of the transferred employees, to which Carrier agreed, and up to 5 days wages to cover time lost in making the transfer and securing a place of residence in the new location. It was over the contingent 5 days pay that the Carrier balked and negotiations broke down.

The Organization based its claim upon Rules 3, 5, 15, 16, 25 (b) and 45 of the Clerks' Agreement. Rules 3 and 5 are general rules whereas Rules 15 and 16 are rules dealing with special circumstances. In any conflict between the general rule and the special rule we have frequently held that the special rule prevails. Awards 6311, 10006, 10713 and 12632.

As we read Rule 16 (b) the restrictions placed upon Carrier when two or more seniority districts or portions thereof are to be consolidated are (1) that reasonable advance notice will be given to the General Chairman and (2) the apportionment of employees affected will be subject to conference and mutual Agreement. There are no other conditions.

There is no claim that adequate notice was not given. The issue is over the second condition which, if carefully read, has reference merely to the apportionment of employees affected. No restriction is placed by the Rule upon the Carrier's right to consolidate the districts, but merely as to how the employees may be apportioned between them. This limited right does not prevent Carrier from effectuating the consolidation nor does it give the Organization a veto over it.

It is inconceivable that, lacking an Agreement on apportionment, Carrier has no recourse but to yield to the conditions requested by the Organization. Rather it seems that the Carrier has an obligation to seek Agreement in good faith and if it fails to reach an accord, to proceed under its general managerial prerogatives. The Organization's recourse, in such event, would be to grieve over the question of whether or not Carrier has carried out its obligation to seek Agreement in good faith and has properly apportioned the employees.

If we were to hold that the transfers could not be made, absent an Agreement on apportionment, one would wonder why the requirement was limited to apportionment. Why did the parties not say that Agreement must be obtained on all aspects of the consolidation, its extent, the operative dates, the methods of handling seniority, etc. It is obvious that the parties only intended a limited area in which Agreement must be sought, the apportionment of employees. A limited area must not be expanded beyond its limits. The tail must not be permitted to wag the dog. If we are not to disregard this requirement as unenforceable our only recourse is to assume that the parties intended this Board to judge which side was unreasonable in its failure to reach an Agreement. Under such a standard we must inevitably hold for the Carrier for the parties were in Agreement on apportionment. They were in disagreement over a matter unrelated to apportionment. We cannot hold that the Carrier was unreasonable in refusing to yield to every condition asked by the Organization when it has agreed on all but one and as to that one, the Organization has another recourse, to proceed under Section 6 of the Railway Labor Act.

The Organization held up the Agreement in order to force from the Carrier concessions which the Carrier was under no obligation to grant. In effect, it sought to expand the Agreement without resorting to the usual

method of seeking amendments. While the Carrier may choose to grant such concessions it is under no obligation to do so, and its refusal cannot, therefore, be deemed unreasonable.

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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1964.

LABOR MEMBER'S DISSENT TO AWARD 13174, DOCKET CL-12670

In Award 13174, Docket CL-12670, the Referee refers to the tail wagging the dog, and seemingly concerns himself with the possibility of rendering some requirement in the Agreement unenforceable. His seeming concern is well founded, though misplaced, for this Award is in error, as was the case when a previous question of transferring work across seniority lines was presented to him, which resulted in Award 12313, for it most certainly ignores the strict seniority districts which were arrived at by the parties proceeding under Section 6 of the Railway Labor Act.

My dissent to Award 12313, Docket CL-11999, with respect to this particular Referee's penchant for failing and refusing to accord the proper meaning and the full force and effect of the rigid seniority lines established by the Agreement, applies equally to this Award 13174; and, by reference thereto, is adopted as my dissent in this case wherein the same Referee again adopts Carrier's pleas and permits not only the transfer of work across seniority lines but also, in this Award, the transfer of an employe and her seniority into a new district where an employe properly holding seniority was permitted to be displaced.

No clearer statement of the intent of the Rules regarding seniority and seniority districts could be found than in Award 5091, Referee A. Langley Coffey, which reads in part:

"In addition, the Carrier acted contrary to Board precedent when it permitted or required Roster 1-B employees instead of Roster 1-A employees to perform the work in question to the detriment of the seniority rights of the employees on the latter seniority roster. Compare Awards 4076, 4653, 4667. That the Carrier could not have been unaware of the Board's views in such matters is evidenced by Award 2050 involving the same parties and the same agreement, in which the Board held in part as follows:

'Rule 4(a) provides that seniority rights of employees will be confined to their respective seniority rosters. This board has repeatedly held that positions or work may not arbitrarily be removed from the confines of one seniority district and placed in another, as was here done. (Citing a number of controlling awards.)'

The Board is not unmindful that when the Carrier first crossed seniority lines there was some provocation for doing so. The exigency of the situation, however, was a matter for joint handling of the parties rather than for unilateral action of one party to the agreement. Neither is there any satisfactory explanation for continuing a violation of the agreement for almost one year. There is a similar lack of explanation as to why new charts could not have been prepared either before or immediately after the first payroll period involving changes in the pay schedules. Further, and a controlling consideration is that the Board, which has only the power to interpret and apply the rules, is powerless to grant relief from rule violations on pleas of extenuating circumstances. The act creating the Board does not make of it a court of law nor of equity. For other considerations bearing on this proposition see Awards 2282, 2506." (Emphasis ours.)

Any number of Awards have been resolved on the same basis until these new views were put forth by this Referee who chose to disregard the many prior holdings of the Board.

For the above and other reasons the Award is in error and I dissent.

/s/ D. E. Watkins
Labor Member

1-12-65