

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**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5069) that:

(1) The Carrier violated the Clerks' Agreement on March 26, 1960 and again on April 2, 1960, when it permitted work to be performed by a party not covered by the Scope Rule of the Clerks' Agreement, such work being regularly performed by clerical employees.

(2) Mr. J. R. Yarbrough, Clerk at Waco, Texas, now be compensated for a two hour call on date of March 26, 1960, and a two hour call on date of April 2, 1960, at rate of time and one-half his daily rate.

EMPLOYEES' STATEMENT OF FACTS: The facts in this claim, as we understand them to be, are that on date of March 26th and April 2nd Mr. R. V. Holder, Agent, Waco, Texas, made trips from the Local Freight Office in Waco to the Yard Office in East Waco for the purpose of picking up waybills and messages. This work is performed regularly by Clerks subject to the Scope Rule of the Clerks' Agreement. This work properly belonged to the clerical employees. Therefore, a clerk should have been called.

We have determined that the following regularly assigned employees at Waco, Texas, customarily perform the work of delivering waybills and picking up waybills between the Yard Office and the Local Freight Office at Waco:

Monday through Friday Car Clerk J. D. Evans makes a trip at 8:00 A. M.; Car Clerk A. C. Cloud makes a trip at 10:00 A. M.; and Demurrage Clerk W. M. Dossett makes a trip at 1:00 P. M.

On Saturday Relief Clerk W. S. Shannon makes a trip in the morning and Chief Clerk C. B. Harmon, Jr., makes one trip in the afternoon.

On Sunday Car Clerk J. R. Yarbrough makes one trip in the morning and Relief Chief Clerk Curtis DuBose makes one trip in the afternoon.

We have determined that neither Agent Holder nor any other employe of the railroad at Waco, not covered by the Clerks' Agreement, has ever performed any of this work of picking up and delivering waybills in the past, but,

violated when he was not called to seal cars after assigned hours and on rest days, instead of a conductor doing such work. The Opinion included the following:

“ * * evidence presented therein leads to the conclusion that over the years the work has not been performed or considered exclusively that of clerks.

“The reverse seems to have been the accepted practice and we are of the opinion that the rules of the Agreement did not intend that the work would be considered exclusively the work of clerks under the fact situation here presented.”

Award 7081 (Referee Whiting) denied claim of a clerk account mechanics securing oil and parts themselves when the clerk was not present to issue material. The Opinion, in full was:

“It appears that on Saturdays, Sundays and holidays subsequent to January 1, 1952 Mechanical Department employees helped themselves to oil and parts needed in their repair work but it does not appear that anyone performed the functions or duties of the Material Distributor on those days, so the claim is without merit.”

Award 5391 (Referee Elson) and **Award 5397** (Referee Donaldson) are similar.

Award 1554 (Referee McHaney). The Opinion in part was:

“Agent Wright did not come under the Clerks' Agreement. It is said that he did not come under any agreement. However, it is our opinion that a part of his duties as agent consisted in billing freight. The fact that clerk Hannah also billed freight did not give him the exclusive right to do so, and we conclude that there has been no violation of the Clerks' Agreement.”

From the facts pointed out above it is evident that there was no need for the service of claimant Car Clerk Yarbrough on the Saturdays in question; that he did not have a monopoly on carrying waybills and messages between the offices on other days; that the Agent's handling of the papers was incidental to a trip to the yard office, which trip was required as part of his duties as Agent; that no off duty clerk was deprived of any work for the reason that clerical employees were on duty and could have made the trip if Agent had not been going to the yard office; that the allegation that transportation was not available was without basis.

Carrier respectfully submits that the claim is entirely without merit, is not supported by the rules and respectfully requests that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On dates of claim, the Agent at Waco, whose position was an excepted one, picked up waybills at the freight station and delivered them to the yard office during the course of an inspection trip of the property.

The Employees allege this was a violation of the Scope Rule of the Agreement; that the work performed by the Agent belonged to covered employees of the Messenger class and could not properly, therefore, be performed by others not within scope rule coverage.

Claimant at the time was a relief clerk whose rest days were Friday and Saturday. On claim dates, Claimant was observing his rest day, but the full clerical force was on duty and available to handle all work required at the yard office.

The Employes allege that the Agent "made special trips . . . for the sole purpose of delivering waybills and picking up waybills" on claim dates. This was denied by the Carrier. No evidence of probative value was offered to support the allegation nor have the Employes shown that the Agent's handling of waybills was anything other than an incidental part of his usual supervisory duties.

In view of the foregoing, the Board finds the Employes have failed to sustain the burden of proving a violation of the Agreement.

The Claim, accordingly, will be denied.

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 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 23rd day of February 1965.