Award No. 18413
Docket No. CL-18279

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6598) that:

1. The Carrier violated and continues to violate the Clerks' Agreement when, effective February 12, 1968, it removed the work of rating, billing, accounting and cashier work from the employes covered by the Clerks' Agreement at Tyler, Texas and assigned it to persons covered by another agreement at Longview, Texas.

2. That the Carrier be required to restore the work that was formerly performed by employes at Tyler, Texas under the Scope of the Clerks' Agreement from which it was removed.

3. The Carrier shall be required to compensate Clerks' C. W. Naul and R. L. Westbrook for 8 hours each at pro rata rate for each and every work day beginning February 12, 1968 and continuing each day thereafter until such work is returned to employes covered by the Clerks' Agreement from which it was removed.

EMPLOYES' STATEMENT OF FACTS: Tyler, Texas is an agency on the Missouri Pacific Railroad. The work and employes at that point are under the Scope of the Missouri Pacific (Gulf District) clerical Agreement.

Longview, Texas is approximately 40 miles northeast of Tyler, Texas and is an agency on the Texas and Pacific Railway which is controlled by the Missouri Railroad. The work and employes at that point are under the Scope of the Texas and Pacific clerical Agreement.

Prior to February 12, 1968 Carrier maintained four (4) clerical positions at Tyler, Texas. Included in the duties of those positions was the handling of all clerical work in connection with less than carload shipments and less than truck load shipments originating or destined Tyler, Texas. The work and time involved was as follows —

Inbound Billing	2½ hours per day
Outbound Billing	3 hours per day

Following a conference on September 25, 1968, the General Chairman was further advised that:

> "During conference you were advised that the clerical work, which is the subject of this dispute, related to the business handled by the Missouri Pacific Truck Lines who had changed its centralized point for the distribution of freight from Tyler to Longview. It is the prerogative of the Truck Lines to handle their freight from any point they consider more suitable. The clerical work in connection with the handling of MPTL freight continues to be performed by clerks located at the point where the MPTL assembles their freight, which is not a violation of the Clerks Agreement."

7. Under date of February 5, 1969, Mr. C. L. Dennis, International President—BRAC, served notice upon the Executive Secretary of the Third Division, National Railroad Adjustment Board, of his intention to file ex parte submission within thirty days after that date, copy of which was furnished the Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: Beginning February 12, 1968, the clerical work of billing, rating, accounting and cashier work, performed by Carrier's clerks was removed and transferred from Tyler, Texas to Longview, Texas and said work is being performed by clerks of the Texas and Pacific Railroad.

The Organization contends that Rule 1, the Memorandum of Agreement between the parties concerning said Rule 1, and the Memorandum of Agreement of February 1, 1967 were violated by Carrier in this instance; that there was no elimination of work herein but a removal of the work from said scope agreement and a transfer and assignment of the work to Longview, Texas and clerks of another carrier; that the work in question has been performed by clerks at Tyler, Texas for over 25 years, which has not and cannot be denied by Carrier.

Carriers position is that (1) the work in question belongs to and is under the exclusive control of the Missouri Pacific Truck Lines; (2) that the Claimant, as well as the employes whose positions were abolished at Tyler, are employes of the Missouri Pacific Railroad and not of the Missouri Pacific Truck Lines; (3) that the Organization does not represent Missouri Pacific Truck Line Employes and is not a party to any agreement with said truck lines except tht February 1, 1967 Memorandum of Agreement; (4) the February 1, 1967 Memorandum of Agreement does not freeze the clerical work of the Missouri Pacific Truck Lines to any particular point; (5) that there is no provision in the Agreement between the parties hereto or between the Organization and the Missouri Pacific Truck Lines which prohibits the Railroad or the Truck Line from eliminating, consolidating or changing "break bulk" or tarnsfer points; (6) the claimants were not the incumbents of the clerical positions abolished at Tyler and have been fully employed and have suffered no wage loss; (7) the Agreement does not contain any penalty provisions.

The Memorandum of Agreement of February 1, 1967 between the Missouri Pacific Railroad Company (Carrier herein), Texas and Pacific Railway Company, Missouri Pacific Truck Lines, Inc., Texas and Pacific Motor Transport Company ad Brotherhood of Railway and Steamship Clerks, Freight Handlers. Express and Station Employes provides as follows:

"1. Missouri Pacific Truck Lines, Inc., and/or Texas and Pacific Motor Company clerical work, such as rating, billing, handling of claims and reevnue accounting on freight moving on motor transport tariff rates which is now performed by clerks employed by the Rail Carriers parties to this Agreement will continue to be performed by such rail clerks the same as at present.

2. It is understood and agreed that the clerical employes represented by Organization are employes of Rail Carriers, not of Motor Carriers, and nothing contained herein shall be construed to create any employer-employe relationship between clerical employes and Motor Carriers."

This Board was confronted with an analagous situation in Award No. 17923 between the same parties herein. The Board in said Award No. 17923 concluded:

"It is well settled that Carrier management is free to determine the way in which the work and operations are to be performed and conducted in the interest of efficiency and economy except insofar as that freedom may be limited by law or agreements. (Awards 12991, 12419, 11776). With this principle in mind we must carefully consider the Memorandum of Agreement of February 1, 1967 heretofore quoted. By that Agreement the Missouri Pacific Railroad contracted with the Clerks to permit them to perform certain work for the Truck Lines. The February 1, 1967 Agreement contains no restriction as to the location where such work will be performed, and this Board cannot read such a restriction into the Agreement. The Missouri Pacific Truck Lines has the prerogative of determining where the work is to be performed. * * *"

Finding the principles as enunciated aforesaid in said Award No. 17923 controlling in this dispute, we must deny this claim.

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 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. Schultz
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1971.

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