

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES
MISSOURI PACIFIC RAILROAD COMPANY**

DISPUTE.—"Claim of employees that positions of Motor Car Operators, Dupu, Ill., be recognized as coming within the Scope Rule of the Clerks' Agreement effective August 1, 1926, that said positions be reclassified, the occupants placed on Class 2 Roster with existing seniority and that said positions or vacancies in connection therewith be filled from Roster No. 2 as provided in the Clerks' Agreement."

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This dispute being deadlocked, Wm. H. Spencer was called in as Referee to sit with this Division as a member thereof.

Prior to April 1932 the carrier herein maintained several switching yards at its terminal at Dupu, Illinois. Hump operations were employed at this terminal. In April 1932 because of the decreased volume of cars moving through the terminal, the carrier discontinued hump operations and resumed flat switching. On July 3, 1932, because of a still further decrease in business, the carrier abandoned three of its yards and concentrated all of its switching operations in the remaining two.

Prior to July 3, 1932, the carrier employed three yard messengers at the Dupu terminal, one on each shift, covering a twenty-four hour period. The record clearly indicates that these messengers, who were under the operation of the Clerks' Agreement, performed messenger service for the various offices within the yards.

The carrier, prior to July 3, 1932, also employed three motor car operators at the Dupu terminal, covering a twenty-four hour period. They operated motor cars between various points in the yards. They transported hump-riders from the yards back to the hump, and other employees of the carrier from and to various points. In addition to the foregoing duties, these motor car operators carried way-bills and cards from one point to another in the yards, receiving them from the messenger on duty or delivering them to him. The record indicates that these motor cars had been in operation in these yards as far back as 1906. Their operators have not hitherto been included under the Clerks' Agreement.

In the rearrangements of its switching operations on July 3, 1932, the carrier dispensed with three of the six positions in controversy. The fundamental issue in the present dispute is whether on this occasion the carrier dispensed with motor operators or with messengers. Certain it is that in the period from July 3 until July 19, 1932, the motor cars were not in operation. During this period, the messengers were retained and required to handle all messenger service within the yards on foot. At the expiration of this period, the carrier dismissed the messengers and restored the motor car operators and required them, partly by motor cars and partly on foot, to perform the messenger service within the yards. With the resumption of motor car service, the motor car operators resumed their duties of transporting employees of the carriers to and from various points within the yards.

In support of its claim, the petitioner cited and relied upon Rules 1 and 76 of the Agreement between the parties, effective August 1, 1926:

"**RULE 1.**—These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

"(1) Clerks.

"(2) Other office and station employes, such as office boys, messengers, chore boys, train announcers, gatemen, checkers, baggage and parcel room employes, train and engine crew callers, operators of office or station equipment, devices, telephone switchboard operators, elevator operators, office, station, and warehouse watchmen and janitors.

"(3) Laborers employed in and around stations, storehouses, and warehouses."

"**RULE 76.**—Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

It is important to note that the petitioner herein is not asking that motor car operators at the Dupu terminal be classified under Rule 1 (3) of the Agreement between the parties. It is, on the contrary, asking this Division to declare that the three positions in controversy contemplate the performance of messenger service within the meaning of Rule 1 (2), and that they have been taken from under the operation of the Clerk's Agreement in violation both of Rule 1 and Rule 76.

CONCLUSIONS OF THE DIVISION.—On the record and the evidence, the Division arrives at these conclusions:

(1) The positions in question, although involving some messenger service, are those of motor car operators and are not included within Rule 1 (2) of the Agreement between the parties.

(2) The carrier, in the rearrangements of its switching operations at Dupu, Illinois, did not discontinue established positions and create new ones under a different title covering relatively the same class of work as forbidden by Rule 76.

AWARD

The claim in its entirety is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 20th day of January 1936.