Award No. 753
Docket No. CL-754

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes of the Missouri Pacific Railroad Company, that the Carrier violated the Clerks' Agreement,

1. When on January 16th, 1938, it abolished the position of caller, rate $3.56 per day at Coffeyville, Kansas and concurrently therewith removed work comprising a part of the regular and normal duty of the caller, as hereinafter stipulated, out from under the scope and operation of the Clerks' Agreement, said work thereafter being performed by a night roundhouse foreman and by a machinist (locomotive inspector);

2. Concurrent with the abolishment of the caller position, the duty and work of calling crews between the hours of 7:00 P. M. and 12:30 A. M., was transferred from the Western District Superintendents' class two seniority district and roster, to the Southern Kansas-Central Division class two seniority district and roster, and assigned said duties to a baggageman, an employe who held no seniority rights on the Western District class two Superintendents' seniority roster entitling him to perform said work;

3. Concurrent with the abolishment of the caller position it changed the hours of the remaining two caller position and assigned one of said position to start work at 1:00 A. M.

That the position of caller abolished on January 16th, 1938, shall be restored, and

> Caller, T. C. Hendricks and others affected be reimbursed for wage loss sustained retroactive to and inclusive of January 16th, 1938."

EMPLOYES' STATEMENT OF FACTS: "Prior to January 16th, 1938, the force of train and engine crew callers subject to the scope and operation of the Clerks' Agreement at Coffeyville, Kansas, listed upon the Western District (Superintendents') seniority district and roster were classified and rated and assigned as follows:

	Rate	
"V. Toothaker	$3.56	...Assigned hours 7:00 A. M. to 3:00 P. M.
C. C. Mulloy.....	3.56	...Assigned hours 3:00 P. M. to 11:00 P. M.
T. C. Hendricks..	3.56	...Assigned hours 11:00 P. M. to 7:00 A. M.

50"—filing work reports and maintaining record of arrival and departure reports performed by the two callers that were retained.

30"—relaying information between dispatcher and foreman as to trains to be run, engine OK, etc., now handled direct by the dispatcher with the foreman.

3'30"—of the 8 hr. assignment there is no work to be performed, this having disappeared.

8' .....Total

"In the presentation of this case to the carrier the employes cited what in their opinion was a violation of several rules of the wage agreement, all being in our opinion far-fetched and illusory, to-wit:

The employes contend that Rules 1, 2 and 4 were violated in that these rules set out the employes that are covered by the agreement and specifically spells out those that are not covered, hence in assigning duties formerly performed by a caller to other employes, such as the night roundhouse foreman, rules were violated.

"The facts are that the situation now existing at Coffeyville is no different than that existing at numerous other terminal points on the railroad where mechanical department foremen and supervisors in the performance of their duties as foremen and inspectors, make or maintain certain records that are correlated with their respective positions. What these two men are doing at Coffeyville now is identical with what they have always done and without complaint from either the Clerks' Organization or the Shop Crafts, because, as stated, the performance of certain clerical work by roundhouse foremen and inspectors is a part of their job as a roundhouse foreman and inspector.

The employes cite Rules 5, 6, 23, 24 and 68 contending that when the carrier transferred 30" of the work of calling crews from the caller to the baggageman they disregarded the seniority rights of the employes.

"The facts are that baggagemen and callers are both included in class 2 of Rule 1. There is no rule in the wage agreement with the employes that provides or implies that at a terminal point such as at Coffeyville the work of employes of a given class cannot be redistributed to meet conditions as they may develop from time to time in either increasing or decreasing force to handle the business.

They further cite a violation of Rule 82 contending that this rule places an obligation upon the carrier to serve 30 days' written advance notice containing any changes desired in the rules.

"As heretofore stated the carrier violated no rules of the existing agreement as there are no rules therein to support the employes' contentions in this case, and what violations they have cited are imaginary.

"This is a plain case of where the carrier reduced its force, the reduction made in strict conformity with the rules of its wage agreement with the employes to meet the requirements of the service as evidenced by the statement of the number of members of crews called as set forth in the Carrier's Statement of Facts.

"There is no basis whatsoever under the rules of our wage agreement for the employes claim which should properly be denied by your Honorable Board."

OPINION OF BOARD: The parties to this dispute agree that when the position in question was abolished, at least two (2) hours and forty (40) minutes of the work, formerly performed by the position of caller daily, was

assigned to the Night Roundhouse Foreman and Machinist Inspector, both of which employes are not within the scope of the current agreement.

The carrier also agrees that as much as thirty (30) minutes per day of the remaining duties are now being handled by the Roundhouse Foreman, directly with the Dispatcher, and that about thirty (30) minutes per day of the work is now being performed by the Station Baggageman, an employe holding seniority rights in a separate and distinct seniority district from the district in which the position of Caller was formerly situated.

Petitioner contends and shows by carrier's bulletin of January 14, 1938, that the Baggageman was instructed to call crews, formerly called by the position in question, over a period of five (5) hours and thirty (30) minutes per day. The specific instruction by the Agent to the Baggageman reading:

"Effective Sunday, January 16, your duties will include calling crews between the hours of 7:00 P. M. and 12:30 A. M".

While there is some difference of opinion between the parties as to the amount of work being performed by the Baggageman daily, which was performed by the Caller when that position existed, the uncontroverted evidence shows that this Baggageman, one who does not hold any seniority rights in the district where the work in question was, by agreement between the parties, located, is now responsible for the caller's duties for a period of five (5) hours and thirty (30) minutes per day. This, in itself, constitutes a violation of the agreement. Carrier agrees that in addition thereto, approximately three (3) hours per day of the work in question was arbitrarily removed from the scope of the current agreement and assigned to mechanical department employes who are not within the purview thereof.

This Board has repeatedly held it to be violative of Clerks' collective agreements to arbitrarily remove work therefrom and assign it to mechanical department employes and/or other classes of employes not covered thereby. Compare Awards Nos. 385, 386, 485, 609, 630, and 649. Compare, also, Awards Nos. 631, 637, 736, and the two preceding award numbers, wherein it was found to be violative of Clerks' collective agreements to assign work to the same classes of employes, who are **"excepted"** from those agreements.

It, therefore, must be held that when the carrier, in the instant case, removed the work in question from the agreement and assigned a substantial amount of it to other employes not within the scope thereof, the carrier violated that agreement.

With respect to the action of the carrier in assigning some of the work in question to an employe covered by the same agreement, but holding rights exclusively in another seniority district, attention is directed to Awards Nos. 99, 198, 199, 610, 612, 718, and the two preceding award numbers, in which we have previously held this also to be violative of the seniority rules of employes in the district from which the work was arbitrarily removed.

The principles contained in the awards cited, as they apply to the facts in the instant case, are hereby reaffirmed. The claims of the petitioner should, therefore, be sustained.

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 carrier violated the current agreement as indicated by Opinion of Board.

AWARD

Claims 1, 2, and 3 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1938.