

Award No. 1126

Docket No. CL-1158

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

SUGARLAND RAILWAY COMPANY

ASHERTON & GULF RAILWAY CO.

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"(a) The carrier is violating the Clerk's agreement at Laredo, Texas, by refusing to establish a clerical position in the Mechanical Department, and in assigning clerical work to employees not covered by the Clerks' Agreement. Also:

"(b) Claim that a clerical position be established, classified, rated, bulletined, and assigned in accordance with the rules of the Clerks' Agreement and that all employees involved in or affected by the carrier's action be reimbursed for all monetary loss sustained."

EMPLOYEES' STATEMENT OF FACTS: "On February 21, 1939 the Brotherhood filed claim with the carrier for establishment of a clerical position in the Mechanical Department at Laredo, Texas to embrace routine clerical work being required of Mechanical Department Foremen. The carrier's records disclosing that said Foremen spent 184 hours performing clerical work in January, 1939.

"On June 29, 1939 Master Mechanic Stark and General Chairman Dyer made a joint check of the clerical work performed by the Foremen and a copy of that check is attached hereto as Exhibit A."

CARRIER'S STATEMENT OF FACTS: "The Carrier maintains a very small Mechanical and Car Department force at Laredo and there is only a small amount of clerical work which is performed in those departments at that point. A thorough check has been made of the clerical work re-

POSITION OF CARRIER: "As indicated in the Carrier's Statement of Facts, there is not sufficient clerical work at Laredo to justify the Carrier in establishing a clerical position in the Mechanical and Car Department at that point. At one time the work was heavy and a larger force employed at Laredo, a clerk being necessary to perform all of the clerical work but due to the fact that in the last several years a very small mechanical and car department force has been maintained at Laredo, the clerical work at that point was reduced in proportion and to such an extent that only a few minutes each day is required of the foremen to perform that work in connection with their supervisory duties, making the services of a clerk unnecessary.

"The clerical position at Laredo was abolished on October 19, 1927, since which time the position has not been maintained. To employ a clerk at Laredo would result in an unnecessary expense and one which cannot be justified by the amount of clerical work which is being performed.

"It is the contention of the Carrier that in view of the small amount of clerical work now being performed at Laredo, there is no justification for the contention of the employees that a clerical position should be established and that the small amount of clerical work as indicated above as being performed by the foremen is not in violation of the Agreement now in effect with the Brotherhood of Railway Clerks and your Honorable Board is respectfully petitioned to deny the claim of the employees in this case."

There is in evidence an agreement between the parties bearing effective date of April 1, 1939.

OPINION OF BOARD: It has been repeatedly held by this Board that work embraced within the scope of an agreement may not properly be removed from such agreement and assigned to employees not subject to its terms. In the instant proceeding there is much conflict of evidence as to the extent of the clerical work performed by the foremen at the time of and subsequent to the filing of complaint on February 21, 1939, but there is ample basis for the conclusion that, entirely apart from such routine clerical work as these foremen handle as a natural incident to their regular duties, a substantial amount of work previously performed by the clerk was transferred to them, and hence removed from the operation of the Agreement, as a result of the abolition of the clerk's position. Under the circumstances of this proceeding, therefore, there was an improper removal of clerical work from the scope of the Agreement, and the employees adversely affected by this removal are entitled to recover all monetary loss sustained. While complaint was not filed until February 21, 1939, more than eleven years after the abolition of the clerk's position on October 19, 1927, the performance of clerical work by the foremen constituted a continuing violation, and the belatedness of the employees' claim merely operates to restrict their recovery of reparation to the period subsequent to February 21, 1939. The request, furthermore, that the establishment of a clerical position be ordered must be denied, since the evidence as to the amount of clerical work involved is conflicting, and it is not the function of this Board to determine the character of the arrangement whereby the violation of the Agreement shall be removed. In other words, while the carrier is directed to make reparation for its past violation, as of February 21, 1939, it is free to adopt any arrangement, within the rules of the Agreement, which will remove that violation.

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 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 evidence of record discloses a violation of the Agreement.

AWARD

Claim sustained to extent and on basis set forth in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.