

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: "CLAIM OF THE SYSTEM COMMITTEE OF THE BROTHERHOOD THAT:

(1) Carrier violated, and continues to violate Clerks' Agreement by assigning and requiring and permitting employes not covered by that Agreement to perform clerical work at Muskogee Store and Mechanical Department, and,

(2) That carrier shall now assign all clerical work at this point to employes covered by Clerks' Agreement."

EMPLOYEES' STATEMENT OF FACTS: "At Muskogee Store and Shops the Shop Superintendent writes up Form 942, 'Material for purchase orders,' compiles Mechanical Department estimate of operating expenses and extends same, posts locomotive mileage and book record of mileage between classified repairs, prepares pencil outlines of various reports at first of month, prepares car service reports CS-11-2 and CS-56, prepares report of tools issued, checks in and out ties at Creosoting Plant, and does office filing."

POSITION OF EMPLOYES: "The rules involved in this dispute are as follows:

'ARTICLE 1—SCOPE

'RULE 1—Employes affected.—These rules shall govern the hours of service and working conditions of the following employes, subject to the exceptions noted below:

'(1) Clerks, checkers, foremen, sub or assistant foremen, and ticket sellers.

'(2) Other office employes, such as office boys, messengers, depot masters, baggage room employes, train and engine crew callers, telephone switchboard operators, office, Station and warehouse watchmen.

'(3) Laborers employed in and around stations, warehouses and storehouse helpers.

EXCEPTIONS

Personal office force of Vice President.
Office of General Superintendent of Transportation.
Chief Clerk.
Claim Investigator.
Chief Car Record Clerk.

'Mr. Niles stated that the work mentioned did not belong exclusively to clerks, and further more it is not even contended that the work set out amounts to as much as 4 hours per day, even if it did belong to the clerks, and for that reason there would be no point in making a joint check.'

'Mr. Malone said that he did not agree that the management has the privilege of removing from the clerks' jurisdiction clerical work whether or not more or less than 4 hours and assign same to employees not covered by the Clerks' agreement.

(Signed) T. H. Niles
W. P. Schopper

(Signed) C. A. Malone
Louis Schott.'

"3. That part of the above quoted memo which refers to complaints other than the one with reference to the Shop Superintendent should be disregarded as not included in the case now before the Board."

POSITION OF CARRIER: "The Shop Superintendent does not perform any routine clerical work. His responsibilities necessarily require that he do whatever is necessary to fulfill the duties of Shop Superintendent. It is obvious that there is always a greater or less amount of work which a Shop Superintendent or other supervisors must do with a pencil in order to properly perform his duties. There is no evidence that any clerical work is being performed by him not reasonably incidental to the performance of his duties, and there are no proper grounds for any contention that the provisions of the agreement are being violated. Even if the allegations of the committee as set out in the conference of July 6, 1938, were correct, there could be no basis for such a contention.

"In Award 806, Docket CL-792 of the Third Division of the National Railroad Adjustment Board, B. of Ry. & S. C. versus Terminal Railroad Association of St. Louis, the Third Division in one paragraph of the 'Opinion of Board' says:

"* * * Moreover, it is to be remembered that Rule 4 does not encompass all clerical work performed in the service of the carrier. As this Division has previously pointed out, there are few, if any, employees of a carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties.'

"The facts do not show any violation of the agreement, and the claim should be denied.

"Since this is an ex parte case, this submission has been prepared without seeing the employees' statement of facts or their contention as filed with the Board, and the carrier reserves the right to make a further statement when it is informed of the contention of the petitioner, and requests an opportunity to answer in writing any allegation not answered by this submission."

OPINION OF BOARD: While the claim in this case indicates that clerical work performed by the Shop Superintendent, Back Shop Foreman, and Round House Foreman is involved, the docket discloses that only the clerical work alleged to have been performed by the Shop Superintendent is considered.

This Board has repeatedly held that a Carrier may not arbitrarily remove positions or work from the scope of the collective Agreement. Such as prerogative would be destructive of the Agreement. See Awards Nos. 631, 637, 736, and 751.

The work complained of in this dispute is as follows: The Shop Superintendent would make a pencil list on Form No. 942 of materials to be purchased. He would then give it to Stenographer Moore, an employee under the Clerks' Agreement to type. The Shop Superintendent also made a pencil list on Form 842 and then gave it to Stenographer Moore, an employee under

the Clerks' Agreement to type. The Shop Superintendent also did pencil work on the estimates of the Mechanical Department's operating expense, and also certain pencil work on miscellaneous reports on the first of the month. Stenographer Moore would then type the reports. A fair reading of this record shows that practically all of the clerical work performed by the Shop Superintendent consisted of filling in of forms and of other memoranda by pencil and passing same to the clerk, an employe under the Agreement, to type.

We quote the following from Award 806 of this Division:

"As this Division has previously pointed out, there are few, if any, employes of a carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties."

Under this practical record the work complained of and performed by the Shop Superintendent was work in connection with his regularly assigned duties.

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 did not violate the current Agreement as contended by the Petitioner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 24th day of April, 1941.