

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

E. L. McHaney, 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 rules of the Clerks' Agreement by assigning and requiring the General Agent at Muskogee, an employe not covered by the Clerks' Agreement to bill carload freight and perform clerical work incident thereto after the Bill Clerk regularly assigned to such work had completed his tour of duty.

(2) That such clerical work shall be returned to the employes affected, and,

(3) That Bill Clerk, J. G. Hannah, regularly assigned to the performance of such duties and work be allowed payment for a call each day on March 4th, 5th and 7th, 1939, and for all other days subsequent thereto when General Agent billed cars and performed clerical work incident thereto after regular employe had completed his tour of duty."

EMPLOYEES' STATEMENT OF FACTS: "Mr. J. G. Hannah, Bill Clerk at Muskogee, is regularly assigned from 8:00 A. M. to 12:00 Noon and from 1:00 P. M. to 5:00 P. M. each day, and during these hours is responsible for the billing and clerical work incident thereto of all freight both LCL and CL. The established rate of this position being \$4.47 per day.

"General Agent, Mr. G. M. Wright, returned to Local Office after 5:00 P. M. on the following dates and billed cars and performed clerical work incident thereto as follows:

March 4, 1939	7:15 P. M.	8 cars Sand.
" 5, "	8:35 P. M.	3 " "
" 7, "	9:25 P. M.	6 " "

"Mr. J. G. Hannah, regularly assigned Bill Clerk, was not called to perform such work."

POSITION OF EMPLOYES: "The Rules involved in this dispute contained in Agreement bearing effective date of June 14, 1921, are as follows:

'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:

"The carrier cannot either piece-meal or wholesale remove clerical duties from the scope and operations of the Clerks' Agreement without due notice, process and agreement. The Organization contends that inasmuch as the action of the carrier was a violation of the agreement, that Mr. Hannah should be compensated for the loss sustained."

CARRIER'S STATEMENT OF FACTS: "1. J. G. Hannah was not bill clerk at Muskogee station in March 1939, or any other time.

"2. The carrier denies the statement in the employees' 'Statement of Facts' that J. G. Hannah 'is responsible for the billing and clerical work incident thereto of all freight, both L. C. L. and carload.' All waybills at Muskogee station are made by the Agent, G. M. Wright, and have been at all times since he has been agent.

"3. J. G. Hannah was not regularly assigned as bill clerk, as alleged. J. G. Hannah on March 19, 1939, was regularly assigned as clerk at Muskogee station, but his duties did not include the waybilling of freight and he had no responsibility of any kind in connection therewith.

"4. The waybilling of freight at Muskogee station is the agent's duty, and there can be no claim on the part of the clerks in connection with such duties."

POSITION OF CARRIER: "Even if the duties of the clerk at Muskogee station included the making of waybills, he could not claim the exclusive right to perform such work (see Award 809, Docket CL-809, of the Third Division), but since this was never a part of the clerk's duties, it is not necessary to consider that question.

"There is no merit in the claim and it should be denied."

OPINION OF BOARD: It is the claim of the System Committee of the Brotherhood that the provisions of the Agreement with the Clerks' Organization were violated when the agent, Wright, at Muskogee prepared the waybills for seventeen cars of sand on three days, March 4, 5, and 7, 1939, after 5:00 P. M. and after clerk Hannah had completed his tour of duty; also that Hannah shall be allowed payment for a call for each of said days and all other subsequent days when Wright billed cars and performed clerical work incident thereto after Hannah had completed his tour of duty.

The Committee refers to Hannah as "Bill Clerk" and to Wright as "General Agent." We think the proper designations are, respectively, clerk and agent, or freight agent. They were so referred to in Award 1403 by the System Committee, the Carrier and the Referee, where clerk Hannah was called on to bill a car of cinders, on a holiday, by Wright, when he should have called on clerk Moore, located at Shopton, where the car originated. See also Award 256, between the same parties, where Hannah and Wright are so designated, and there is here no showing of a change in title or responsibilities of their positions.

It is admitted by the Carrier that clerk Hannah from time to time made out waybills, but, it is insisted, that, in doing so, he was only assisting the agent, and that many employees, not covered by the Clerks' Agreement, prepare waybills, among others, agents, telegrapher-clerks, and local freight conductors; that one of the principal responsibilities of an agent is the preparation of waybills, upon which the revenue of the Carrier is based. With this statement of the Carrier we agree. The fact that clerk Hannah was called upon, on a holiday, to make a waybill, as shown in Award 1403, supra, does not show that it was his exclusive duty.

As said in a recent case, Award 1418:

"Rule 1 of the agreement (Scope Rule) does not enumerate the kind of work to which the agreement applies, such as weighing in this instance, but only enumerates the type of employees covered by the agreement.

"Not all clerical work comes within Rule 2. Not all clerical work is performed by clerical and other employees. As said in Award No. 806, '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.'"

See also Award 1484.

Agent Wright did not come under the Clerks' Agreement. It is said that he did not come under any agreement. However, it is our opinion that a part of his duties as agent consisted in billing freight. The fact that clerk Hannah also billed freight did not give him the exclusive right to do so, and we conclude that there has been no violation of the Clerks' Agreement.

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 employee involved in this dispute are respectively carrier and employee 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 there has been no violation of the Clerks' Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of August, 1941.