

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, 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 General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad Company that the Carrier violated the Clerks' Agreement:

1. When on July 31st, August 1st, 2nd, 6th, 7th, 8th, 9th, 10th, 15th, 19th, 20th, 21st, 22nd, 23rd, 24th, 28th and 30th, and September 10th, 11th, 12th, 13th, 20th, 21st, 23rd, and October 5th, 8th and 20th, 1940, it removed the clerical (weighmaster), work consisting of weighing cars and compiling scale tickets at Pine Bluff, Ark. from the scope and operation of the clerks' agreement and assigned said work to an engine foreman (yard crew foreman), an employe who holds no seniority rights under the clerks' agreement, but who is covered by the wage agreement of another craft.

2. That F. Oglesby, occupant of the position of demurrage clerk, rate \$5.79 per day, assigned hours 7:00 A. M. to 12:00 noon—1:00 P. M. to 4:00 P. M., be compensated for a 'call' or \$2.17 for each date shown during which the clerical work herein described was performed by an engine foreman (yard crew foreman)."

EMPLOYEES' STATEMENT OF FACTS: "The station force at Pine Bluff, Ark., subject to the scope and operation of the clerks' agreement on July 25th, 1940 was:

CLASSIFI- CATION	OCCUPANT	DAILY RATE	HOURS OF ASSIGNMENT
Chief Clerk	P. R. Huston	\$6.79	8:00 a to 12:00 N—1:00 p to 5:00 p
Cashier	J. W. Graves	6.54	8:00 a to 12:00 N—1:00 p to 5:00 p
Rate Clerk	G. Samuels	6.29	7:00 a to 12:00 N—1:00 p to 4:00 p
Accountant	P. E. Crickett	6.54	8:00 a to 12:00 N—1:00 p to 5:00 p
Bill Clerk	L. B. Wallace	6.04	9:00 a to 12:00 N—1:00 p to 6:00 p
Demurrage or General Clerk	F. Oglesby	5.79	6:00 a to 12:00 N—1:00 p to 3:00 p
Yard Clerk	J. Henry	4.99	9:00 a to 12:00 N—1:00 p to 6:00 p
Ticket Clerk	Mr. Coleman	6.04	10:00 p to 2:00 a—3:00 a to 7:00 a
Trucker-Porter	F. Paschal	.41 per hr.	6:45 a to 12:00 N—1:00 p to 3:45 p
Trucker	L. E. Edwards	.41 per hr.	9:00 a to 12:00 N—1:00 p to 6:00 p
Messenger	R. Graves	2.40	8:00 a to 12:00 N—1:00 p to 5:00 p

This decision was later supplemented when there was some question raised by the General Chairman as to the intent of the decision, and on June 14, 1940 he was advised:

"* * * Our decision of January 29th does not imply that the fulfillment of duties of a weighmaster would be exclusively assigned "where clerical force is maintained" nor "that it shall be performed by none other than clerks."

'Our decision of January 29th rendered following conference with you was that the fulfillment of the duties of a weighmaster would be performed by clerical forces at such points as at Paragould where clerical forces are employed. To further clarify the intent of our decision of January 29 * * * with respect to claims filed by a clerk at Lexa for a "call" account cars weighed by telegrapher. The yard clerk is ordinarily maintained at Lexa during the vegetable movement only; when so maintained he is on a six day week assignment that does not include Sundays. At such time as there is no yard clerk employed at Lexa, and on such days as Sundays when he is not regularly assigned to work, the weighing of cars is done by other forces, such as agent telegrapher, etc. The decision of January 29th does not mean that because there is a clerk employed at Lexa between 12 M.N. and 9:00 A.M. on week days that he shall be called to weigh cars during the hours of the day that he is not on duty, nor was it intended that he would be called to weigh cars on Sundays, as this is a six day job and not a seven day job.'

This decision and our interpretation of the decision rendered by the Management to the Employees on January 29th was, so far as our records disclose, accepted by the Employees.

"Following the abolition of the position of yard clerk at Pine Bluff on June 25, 1940 and the rearrangement of hours of service of the remaining force, the engine foreman resumed the practice after 6:00 P.M. of weighing cars, a time of day when there were no clerical forces on duty. Assignments were:

Chief Clerk, Cashier and Accountant—8:00 A.M. to 5:00 P.M.
Rate Clerk—7:00 A.M. to 4:00 P.M.
Bill Clerk—9:00 A.M. to 6:00 P.M.
General Clerk—6:00 A.M. to 3:00 P.M.

This situation continued until about October 20th and during the interim, July 31st to October 20th, the Employees filed claim, which is the subject of this dispute for a 'call'—three hours at pro rata rate amount \$2.17 in favor of F. Oglesby, General Clerk, because he was not called to weigh the cars that were weighed by the engine foreman after the general clerk's hours of service assignment. This is the claim presented by the Employees to the National Railroad Adjustment Board and amounts to, according to their presentation to the Management, \$58.59."

POSITION OF CARRIER: "The Employees in this case are attempting to obtain by an award from the National Railroad Adjustment Board creating a condition of employment that they did not obtain through negotiations with the Management. They are attempting to have the weighing of cars classified as clerical work and establish a practice on this railroad that no one other than clerical forces can weigh cars. We have stated to the committee that we were agreeable for clerical forces to weigh cars at such points where they were on duty, but we did not and were not agreeable to give to the Clerks a monopoly of this class of work. It has always been our practice, and heretofore without complaint, for engine foremen to weigh cars. This condition was known at the time the agreement with the Clerks was negotiated and there has been no change in our practice, except as heretofore stated, since the current schedule was negotiated."

OPINION OF BOARD: Whether the work of weighmaster falls within the scope of Rule 1 as it appears in the agreement effective August 1, 1926

we are not now concerned. A controversy arose over the subject. The Organization filed claims on the theory that such work came under the agreement. While those claims were pending negotiations were had which resulted in the following agreement, under date of January 29, 1940, by the Carrier upon the strength of which the Organization withdrew its claims.

"Our several conferences and exchange of correspondence with respect to complaints and claims involving the Weighing of cars—performance of duties of a weighmaster—by other than clerical forces at Paragould, Ark.

"At such points as Paragould where clerical forces are employed the performance of duties assigned to weighing of cars, or, in other words, the fulfillment of the duties of a weighmaster, is work properly coming within the scope rule of the wage agreement with the Clerks, and division and district officers have been so advised. (Emphasis added.)

"It is understood that claims heretofore filed by you for alleged loss of time by clerical forces due to other than employees coming within the clerks agreement performing the duties of a weighmaster, are withdrawn in their entirety."

That Pine Bluff is a point where a clerical force is employed is not disputed. The Carrier contends, however, that the agreement was intended to extend only to such times as a member of the clerical force is on duty. The Carrier attempted to inject this limitation into the supplemental agreement in a letter dated June 14, 1940 addressed to the General Chairman of the Organization. The latter promptly repudiated the Carrier's interpretation.

It is a well established rule of decision of this Board that it will not supplement the terms of an unambiguous agreement. Of a similar contention made by the Carrier in an analogous dispute in Docket TE-995, Award 1096, it was said: "Under these circumstances—the rule itself being clear and unambiguous—it is unnecessary to go outside the Agreement to discover the intent of the parties, nor is there any basis for altering the express provisions of the rule."

To sustain the Carrier's position here would put a limitation upon the supplemental agreement which cannot be found within its terms.

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 employe involved in this dispute are respectively carrier and employe 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 agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of December, 1941.