

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 Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When during April or thereabout of 1940 concurrent with the inauguration of 'over-the-highway' trucking service in and out of Carthage, Mo. on the Joplin-White River Division it removed work consisting of trucking freight, checking, receiving and delivering freight in Carthage, Mo. warehouse out from under the scope and operation of the clerks' agreement and assigned or utilized a truck driver, an employe of the Columbia Terminals Company, to perform said work, who is an 'outsider'—(not a railroad employe) and who holds no seniority rights under the provisions of the clerks' agreement entitling him to perform same.

2. That the warehouse foreman, rate \$4.94 per day, whose assigned hours are 8:00 A. M. to 12:00 Noon—1:00 P. M. to 5:00 P. M., six (6) days per week, be paid a 'call' for each day that the truck driver performed this work effective with July 14th, 1940, on which date the employes' complaint was formally presented to the division superintendent."

EMPLOYES' STATEMENT OF FACTS: "The station force at Carthage, Mo. subject to the scope and operation of the clerks' agreement as listed in the Mediation Wage Agreement (Board of Mediation Case C-337), effective November 1st, 1928, consisted of:

Chief Clerk	\$5.74	per day
Cashier	\$5.49	per day
Bill Clerk	\$4.99	per day
Yard Clerk—(2)	\$4.39	per day
Warehouse Foreman	\$4.54	per day
Trucker—(2)	\$0.41½	per hour
Porter-Baggage man	\$2.85	per day

while the Clerks' Mediation Wage Agreement dated August 1st, 1937 (Board of Mediation Case A-395), listed a force of:

Chief Clerk	\$6.14	per day
Cashier	\$5.49	per day

at 6:00 P. M. is questionable. His hours of service assignment terminated at 5:00 P. M. This truck is scheduled to arrive at Carthage at 6:00 P. M. Warehouse foreman is not on duty at that time (6:00 P. M.) nor is he required to be on duty. There would be nothing for him to do if he was. The operator of the truck opens the freight house door, trucks his inbound freight out of his road vehicle into the freight house, sets it down in a space set aside for it in the warehouse. He then picks up the outbound freight that was piled in the space set aside for it—Carrier's Exhibit 'B'—by the station force and loads it in the truck.

"This over-the-highway truck is scheduled to arrive Carthage at 6:00 P. M. daily except Sunday, and, for the information of the Board, there is tabulated hereunder the quantity of L. C. L. freight received and forwarded by truck on this schedule, for period January 1940 to May 1941, inclusive:

Month	Pounds of L.C.L. freight received from the truck	Pounds of L.C.L. freight delivered to the truck
January 1940	89,531	71,289
February	68,212	56,700
March	56,149	53,910
April	87,496	70,390
May	80,155	73,294
June	62,179	66,984
July	69,690	90,287
August	61,002	97,959
September	51,378	60,147
October	64,110	79,544
November	60,799	60,769
December	49,790	62,423
Total	800,491	843,696
Average per Month	66,708	70,308

Month	Pounds of L.C.L. freight received from the truck	Pounds of L.C.L. freight delivered to the truck
January 1941	55,723	63,832
February	57,047	56,324
March	64,260	70,137
April	83,180	87,262
May	80,790	94,027
Total	341,000	371,582
Average per Month	68,200	74,316

"As heretofore stated the Employees in prosecuting this dispute with the Management have in no instance cited any rule of the wage schedule agreement dated August 1, 1926 to support their contention, hence the inevitable conclusion that the Employees are presenting this case to the National Railroad Adjustment Board in the hope of a favorable award which would give to them a rule applicable to their working conditions—a condition of employment the employees have not obtained through negotiations and one that the Railway Labor Act does not empower the National Railroad Adjustment Board to grant."

OPINION OF BOARD: The controlling facts in this dispute are basically the same as in Docket CL-1606, Award 1647; and what was there said is equally applicable here.

The controversy involves the Carrier's warehouse at Carthage, Mo. to which its over-the-road hauler has a key with which he gains access to the warehouse when the regular clerical force is off duty. He is not under the

Clerks' Agreement but he performs work in the Carthage warehouse which clearly falls within the scope of that agreement. The fact that he performs the work at a time when the regular clerical force is off duty does not excuse the Carrier's failure to assign the work in accordance with the terms of the agreement.

The Carrier is directed to make reparation to the employees affected by its violation of the agreement beginning July 14th, 1940.

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 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 9th day of December, 1941.