

Award No. 1694
Docket No. CL-1656

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Carl B. Stiger, 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 it assigned clerical work consisting of keeping the time and handling of payrolls of extra gangs on the Central and Southern Kansas Divisions to extra gang foremen and others, employes covered by the wage agreement of another craft and who hold no seniority rights under the clerks' agreement entitling them to perform said work, and failed and refused, and continued to refuse to assign the clerical work here involved to employes coming within the scope of the current clerks' agreement for whose benefit the agreement was written.

CENTRAL DIVISION

(a) Extra gang No. 1 with approximately thirty men in charge of Foreman, Mr. J. Dollar, engaged in new rail work—Clarksville District.

(b) Extra gang No. 2 with approximately thirty men in charge of Foreman, H. M. Lawrence, engaged since February 1st, 1941 in new rail work—Clarksville District.

(c) Extra gang No. 3 with approximately thirty men in charge of Foreman J. N. Wright, engaged in bluff scaling and new rail work—Clarksville District.

SOUTHERN KANSAS DIVISION

(d) Extra gang No. 1 with approximately thirty men put on January 16th, 1941, in charge of Foreman, Mr. F. May, engaged in new rail work at Altoona, Kansas.

(e) Extra gang No. 2 with approximately thirty men put on January 27th, 1941, in charge of Foreman, Mr. W. D. Pickering, engaged in new rail work—Altoona, Kansas.

(f) Extra gang No. 3 with approximately thirty men put on January 28th, 1941, in charge of Foreman, Mr. Chas. Ice, engaged in new rail work at Altoona, Kansas.

the Carrier's accounting offices for preparation of pay-rolls and other records, all of which work in these accounting offices is handled by the clerical workers classified as such and subject to this rule (Scope—Rule 1).

**Definition of Clerk.
Rule 2:**

This rule is merely for the purpose of classifying employees of the specific payroll classifications named in Rule 1 as between those coming under groups 1, 2 or 3; in other words, if an employee with a payroll classification of the classes named in group 2 or 3 in Rule 1 performs four hours per day clerical work, he will be placed in group 1 and taken out of groups 2 or 3.

Promotion Basis—Rule 4.

Seniority Districts—Rule 5.

Vacancies—New Positions—Rule 6.) None of these rules have the remotest
Bulletins—Rule 10.) connection with the subject of this
New Positions—Rule 68.) dispute.

Rates—Rule 76.)

Date Effective—Rule 82.)

"This entire case is an effort on the part of the employees to create a preposterous situation by making a job for a clerical worker to be paid anywhere from \$5.00 to \$6.00 per day to keep the time (pencil record) of laborers in charge of a foreman working out on the line of road on track rehabilitation work. If he was employed there would be not to exceed 10" to one-half hour's work for him to do in a eight hour period—this is illustrative of the absurdity of the Employees' request.

"There is no rule in the wage schedule agreement we have with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that would justify or permit the Board to sustain the Employees' petition."

OPINION OF BOARD: This opinion covers this Docket, CL-1656, and Dockets CL-1737, Award 1695, and CL-1738, Award 1696. With one exception they all involve substantially the same facts and contentions and will be considered together. The exception is that in Docket CL-1737, Award 1695 the Carrier in January 1941 assigned on two occasions timekeeping work performed by certain foremen to clerks and later abolished the positions of extra gang timekeeper and returned the clerical work to the foremen. In the instant Award the Board has directed its attention to the contentions of the Employees made with reference to this exception.

For many years extra gang foremen performed the clerical work of keeping the time of the gangs. Whenever in the judgment of the Management conditions demanded that a foreman be relieved of keeping the time this work would be assigned by the Carrier to a clerk. When the necessity for this assistance to the foreman had passed the position of extra gang timekeeper would be abolished and the work returned to the foreman.

The Carrier states each foreman devotes from 15 to 18 hours per month to this clerical work while the Employees estimate the time from 45 to 54 hours per month at each of the two points.

The question is: To avoid a violation of the agreement between the parties, effective August 1, 1926, must the Carrier establish and maintain an extra gang timekeeping position and assign a clerk to the position at a compensation of \$4.89 per day to perform the work which has heretofore been attached to the position of foreman?

The material part of the agreement reads:

"ARTICLE I

SCOPE

Employees Affected, Rule 1

"These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

(1) Clerks

* * *

The Board is of the opinion that the clerical work in question is normally, reasonably, and logically incidental to the position of foreman; that, excepting the period during which assistance to the foreman is required, this clerical work is not subject to the agreement and that the Carrier has the right to abolish the position when in its judgment assistance to the foreman is no longer warranted.

The performance of clerical work incident to a position not within the scope of the agreement does not subject such work to the terms of the agreement.

Award 615 holds the scope rule is not all inclusive; that the right to exclusive performance of a class of work does not arise under all circumstances in the following language:

"The Board does not intend in this case in the slightest to impinge upon or limit the principles asserted by the Clerks but it is a mistaken concept that the source of the right to exclusive performance of the work covered by the agreement is to be found in either the scope or seniority rules; they may be searched in vain for a line even implying that they purport to accord to the employees represented the exclusive right to the performance of the work covered by the agreement. The Scope rules describe the class of work; they do not undertake to specify directly the inclusion of all of such classes of work; the Seniority rules merely control the disposition of the work that is available under the agreement."

Our conclusion is supported by Awards 806, 809, 931, 1314, and 1593.

In Award 931 when work of the chief dispatcher increased to a point where he was unable to perform efficiently all his work the position of assistant chief dispatcher was created and a portion of his work delegated to his assistant. When the necessity for the office of assistant chief dispatcher had passed the work was returned to the chief dispatcher. The Organization claimed "that work once subjected to an agreement may not be removed therefrom by unilateral action, and although positions may be abolished when the work thereof no longer exists, where work remains it cannot be handed over to others not covered by the agreement." The Opinion states:

". . . The point here made is that the handing of this routine clerical work back to whence it came is in conflict with the principles referred to, i. e., that a position may not be abolished with work remaining turned over to persons outside the agreement. With this contention we cannot agree, since except as clerical work may be incidental to positions covered by the dispatchers' agreement, the scope thereof does not include straight routine clerical work. Nor can we agree with the proposition that the turning back to the chief dispatcher of the work taken from him (he being of an excepted class not subject to the agreement), constitutes a transgression of those principles. As earlier stated there is no specific particular type of work that can be said to be peculiarly work of an assistant chief dispatcher. On the contrary, his work consists of, when his position

is necessary at all, the handling of that excess of the chief dispatcher's work which the latter is unable to perform; thus when this excess disappears the work of assistant chief dispatcher disappears. Though some of the same class of work which he did perform may thereafter continue to be performed by the chief dispatcher, it must be remembered that chief dispatcher work is not subject to the agreement except only as an excess thereof may be assigned to a position of assistant chief dispatcher that may be established. Therefore, it is only an excess of such work which ever becomes subject to the dispatchers' agreement, and when the excess vanishes there is no such work covered by the dispatchers' agreement."

The above mentioned awards recognize and apply the rule stated in Award 931.

This Division in Award 806 said:

"... 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 Employees request the Board to give special consideration to Award 1295 in which award, made in December 1940, the Employees for the first time urged the contention now reasserted in the instant award. In said award this Division sustained the contention of the Brotherhood of Railway & Steamship Clerks that timekeeping positions were abolished by the Carrier in violation of the current agreement. Award 1295 rests primarily on the following statement:

"This Board has consistently held in a long line of awards that work subject to an agreement cannot arbitrarily be removed therefrom. Cf. Awards 385, 458, 571, 631, 637, 751, 752, 754, 791, 1122, 1209, 1210. . . ."

But the subject matter of the cited awards was not clerical work merely incidental to a position not included in the agreement. The work involved in said awards consisted of functions and duties which inhered in and were attributes of the position of clerk, duties and functions which characterized and constituted the position, and the awards properly decided that such work was within the scope of the agreement and the Carrier could not abolish the position of clerk and assign the duties and functions inhering therein to employees not within the purview of the agreement.

As indicated, the Board is of the opinion that Awards 806, 809, 931, 1314, and 1593 rather than the awards relied on in Award 1295 should control the decision in the instant award.

The clerical work of timekeeping, when performed by foremen, was incidental to that position. The Carrier had the right to abolish the position of clerk created for the purpose of assisting the foremen when, in its judgment, conditions no longer warranted its continuance and to return the work to the foremen.

As stated in Award 931:

"... it is only an excess of such work which ever becomes subject to the dispatchers' (clerks) agreement, and when the excess vanishes there is no such work covered by the dispatchers' (clerks) agreement."

For the foregoing reasons we find no violation of the 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 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 no violation of the rules has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of January, 1942.