

Award No. 1808
Docket No. CL-1659

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee that:

(a) The carrier violated the Clerks' Agreement at Harlingen, Texas by failing and refusing to assign work covered by the Clerks' Agreement in the Mechanical Department to employees holding seniority rights in Seniority District of Mechanical and Store Department employees, also

(b) Claim for all losses sustained by employees involved in or affected by this agreement violation.

EMPLOYES' STATEMENT OF FACTS: On June 14, 1940 the Third Division rendered Award 1122, involving the performance of the work involved in this claim, holding that the carrier was violating the Clerks' Agreement by assigning the work to employees holding no seniority rights under the Clerks' Agreement.

The carrier made proper payments under the award for the period ending July 15, 1940. However, from July 16, 1940 to October 15, 1940 inclusive the carrier refused to assign the work to employees holding seniority rights in that seniority district.

From July 16, 1940 until October 15, 1940 the carrier assigned part of the work to the mechanical employees, a part of it to the Trainmasters Clerk at Harlingen and a part of the monthly reports to an employee holding seniority rights in this seniority district.

POSITION OF EMPLOYES: This claim involves the action of the carrier in refusing to properly assign the work in the Mechanical Department at Harlingen, Texas.

That portion of the claim dealing with the performance of this work by Mechanical employees is the same as that involved in Award 1122, therefore we will not go into detail in regard to that feature. Our position is exactly the same in this instant case as it was in Docket CL-1121, Award No. 1122 and is well known to this Board. We feel that this Board will hold that the carrier's action after July 15, 1940 was just as much a violation as it was before July 15, 1940.

the instant proceeding there is much conflict of evidence as to the extent of the clerical work performed by the mechanical foreman and car foremen upon abolition of the clerk's position on May 31, 1938, but there is ample basis for the conclusion that, entirely apart from such routine clerical work as these foremen handle as a natural incident to their regular duties, a substantial amount of work previously performed by the clerk was transferred to them, and hence removed from the operation of the Agreement, as a result of the abolition of the clerk's position. Under the circumstances of this proceeding, therefore, there was an improper removal of clerical work from the scope of the Agreement, and the employes adversely affected by this removal are entitled to recover all monetary loss sustained."

The findings of your Honorable Board are that the record discloses a violation of the Agreement. The opinion of your Honorable Board states that under the circumstances of the proceeding, therefore, there was an improper removal of clerical work from the scope of the Agreement and the employes adversely affected by this removal are entitled to recover all monetary loss sustained. The Carrier cured the violation, as outlined in the opinion of your Honorable Board, by restoring all of the clerical work, except that incidental to the foremen's duties, to employes coming within the scope of the Clerks' Agreement.

It is the contention of the Carrier that the clerical work formerly performed by the mechanical foreman and Car Foremen at Harlingen is now being performed by employes coming within the scope of the Agreement between the Carrier and the Organization, under which circumstances, the Agreement is not being violated and your Honorable Board is respectfully petitioned to so rule.

OPINION OF BOARD: This is a continuation of the controversy considered in Award 1122. The carrier had abolished the position of Mechanical Clerk at Harlingen effective March 31, 1938 and the complaint of the committee was that the clerical work had been assigned to the mechanical foreman and car foreman. The claim was sustained, this board holding that work embraced within the scope of the agreement had been removed from it and assigned to employes not subject to its terms. To comply with the terms of that award the carrier discontinued a part of the clerical work and reassigned a part. Certain portions were left in the hands of the same foremen, a procedure which the carrier seeks to justify on the ground that such clerical work was merely incidental to the regular duties performed by these men. Another part of the work was assigned to a clerk in the Mechanical Stores Department at Kingsville who was covered by the agreement and was in the same seniority district as the Harlingen clerk. Another part was assigned to the Trainmaster's Clerk who was covered by the agreement but was in another seniority district.

We are satisfied that employes not covered by the agreement are still doing some clerical work which is not incidental to their regular duties. The assignment of the clerical work to an employe in another seniority district was likewise a violation of the agreement, for it is well settled that a carrier in discontinuing a position, not only may not assign the work to those outside the scope of the agreement, but is not permitted to assign it even to those covered by the agreement if they hold seniority rights exclusively in another seniority district. Awards 610, 612, 752, 753, 756, 975, 1403, 1440, 1611, 1685.

We therefore find that there was a violation of the agreement to October 16, 1940 when the position of Mechanical Clerk at Harlingen was reestablished.

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 violated the agreement.

AWARD

Claim (a) sustained.

Claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1942.