

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, 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 it removed the clerical work at Wynne, Arkansas consisting of:
 - (a) Checking and transferring less-car-load freight (merchandise) formerly assigned to and performed by "Warehouse Clerk, then rated at \$5.04 per day" requiring two (2) hours each day to perform.
 - (b) Compiling Less-Car-Load Merchandise Transfer Reports Form TD-22 and other running reports for use in compiling Form 1597 (Comparative Statement of Business Handled) and Form TD-19 (Car-Loads of Commercial Freight Handled for Month of _____) formerly assigned to and performed by a "General Clerk then rated at \$4.79 per day" requiring thirty (30) minutes each day to perform.
 - (c) Compiling Drayage Reports Forms 7402 and 7403 and Demurrage Reports Form 2897 and Form 4490 Jt.—Cars Handled Under Average Agreement, formerly assigned to and performed by a "General Clerk then rated at \$4.79 per day" requiring one (1) hour and thirty (30) minutes each day to perform.
 - (d) Compiling Inbound Freight Reports Forms 4842 and 4843, making monthly balance on same, formerly assigned to and performed by a "General Clerk then rated at \$4.79 per day" requiring three (3) hours and thirty (30) minutes each day to perform.
 - (e) Selling tickets and checking cash turnover from telegraphers on duty, formerly assigned to and performed by a "Ticket Clerk then rated at \$5.19 per day" requiring thirty (30) minutes each day to perform.
- (2) That the senior qualified demoted clerk on the seniority district be compensated for a day's pay at \$4.79 per day, plus \$1.20 per day represented in wage awards granted subsequent to the date of the Carrier's action, which was in violation of the agreement, less amounts earned in other employment,

if any, retroactive to and inclusive of October 29, 1941, on which date the Division Chairman formally presented the dispute and claim to the Division Superintendent.

(3) That the individuals entitled to receive payment of claims be determined by a joint check of the payrolls and the seniority roster.

EMPLOYEES' STATEMENT OF FACTS: On November 1, 1928, the effective date of the Clerks' Mediation Wage Agreement (Mediation Case C-337), the station clerical force at Wynne, Arkansas subject to the scope and operation of the Clerks' Agreement consisted of:

Cashier	—	Rate	\$5.39	per day
Ticket Clerk	—	"	4.79	" "
Ticket Clerk	—	"	4.74	" "
Yard Clerk	—	"	4.64	" "
Yard Clerk	—	"	4.89	" "
Warehouse Clerk	—	"	4.64	" "
General Clerk	—	"	4.39	" "
Station Porters (2)	—	"	2.00	" "
Truckers (3)	—	"	.36¢	per hour

The Warehouse Clerk position occupied by Clerk R. D. Benthall was abolished during the latter part of 1928 or the early part of 1929, record of the exact date is not available to the Employees.

The position of Ticket Clerk was abolished on or about January 1931, the record of the exact date is not available to the Employees.

The position of General Clerk was abolished on or about March 1934, the record of the exact date is not available to the Employees.

Prior to the abolishment of the General Clerk position, which had formerly been a full time position at the local freight house, it was changed from "General Clerk" at the local freight station to a combination position of "General Clerk—Yard Clerk" and the occupant, Clerk J. C. Stutts, devoted four (4) hours per day as General Clerk at the local freight office and four (4) hours per day as Yard Clerk at the yard office located a distance of between one and two blocks away from the local freight station.

The occupants of the clerical positions, Warehouse Clerk and General Clerk, also Ticket Clerk, performed the clerical work as shown in our Statement of Claim, which clerical duties comprised the substance of their ordinary, normal and regular duties for many years prior to the abolishment of the positions.

On October 29th, 1941, following observations which clerical employes had been conducting for some time in an effort to develop the facts and historical background, the Division Chairman formally filed complaint and claim with the Division Superintendent. (EXHIBITS "A-1" and "A-2.")

Under date of November 4th, 1941 the Superintendent declined the Employees' request and claims. (EXHIBIT "B.")

Under date of November 17th, 1941, the General Chairman filed with the General Superintendent on appeal from the decision of the Division Superintendent. (EXHIBIT "C.")

Under date of November 22nd, 1941, the General Superintendent rendered his decision sustaining the decision of the Division Superintendent. (EXHIBIT "D.")

Under date of December 1st, 1941, the General Chairman filed with the Chief Personnel Officer on appeal from the decision of the General Superintendent. (EXHIBIT "E.")

names employes other than clerks, such as office boys, messengers, laborers, etc., and the only purpose of Rule 2 is to define such of the classes of employes as are specifically mentioned in Rule 1 as a clerk when the duties assigned to them involve or require of the individual such clerical work as is described in the rule for a specified number of hours per day. There is nothing in this case that involves the application of Rule 2 of the agreement with the Clerks' Organization unless they are attempting to say that because the agent at Wynne is for a majority of the working days of the month devoting four hours or more per day to clerical work, that he should be classified as a clerk. He is not a clerk but an agent at a railroad station and charged with the responsibilities of an agent.

The Employes then cite the promotion, seniority and related rules of the agreement of August 1, 1926. For what purposes these rules are cited is not known as the promotion and seniority rules of the agreement apply only to the employes that are subject to the provisions of these rules. The agent is not subject to the provisions of these rules, and none of the duties that the agent performs are subject to the provisions of these rules. The agent is subject to the provisions of the rules of the agreement with the Order of Railroad Telegraphers, not the Clerks' Organization.

Rule 82. This rule is in the agreement for the purpose of stating when it became effective, how long it will continue in effect and under what conditions it is subject to change. Why it is cited is unknown to the Carrier. It could have no connection whatsoever with the instant dispute.

The Management has attempted to give to the Board in this submission an honest picture of the facts involved in this case, which briefly summarized are:

The Clerks' Organization are attempting to obtain an award that would prohibit an agent, whose working conditions are governed by an agreement with the Order of Railroad Telegraphers, from performing clerical work incidental to his duties as a station agent. If this result be accomplished, it would not only be placing upon the Management an unnecessary burdensome expense for the handling of business at its stations, but likewise would restrict the duties of a class of employes whose working conditions are governed by an agreement with another labor organization. It would practically revolutionize the established practices of the handling of work at railroad stations, which generally comprise two classes of employes—agents and telegraphers represented by the Order of Railroad Telegraphers with whom we have had an agreement embodying rules governing working conditions and rates of pay since 1892, and clerical workers and station labor represented by the Clerks' Organization with whom we have had an agreement embodying rules governing working conditions since February 1, 1922.

OPINION OF BOARD: The controlling facts in this case are not in dispute. Between the years 1928 and 1934, the Carrier discontinued three or more clerical positions at Wynne, Arkansas, and assigned a considerable portion of the duties thereof to the Agent, an employe not within the scope of the clerks' collective agreement, but within the telegraphers' agreement.

This is not a one-man station, but there is a large force, either nine or eleven employes at this station.

The petitioner contends that the Carrier has violated the clerks' agreement, especially Rule No. 1 and the Seniority Rules, by Carrier's arbitrary removal of this clerical work therefrom. Carrier contends it is within its rights, without restriction, in assigning station work to this Agent, regardless of whether it previously had been performed by employes under the terms of the clerks' agreement and that such action did not constitute a violation of the clerks' agreement.

Both parties have cited this referee many awards by this and other Boards sustaining their respective contentions in the claim. Space will not permit a review of but a few of them.

The petitioners rely chiefly on Awards Nos. 637 and 751, while the Carrier leans heavily on Award No. 615. The opinions in all three of these Awards were prepared by Referee Swacker. Award No. 637 involved the same parties and the same agreement that is involved in this claim. The facts in that Award are: the position of General Clerk and Inbound Clerk (both under the clerks' agreement) at Kansas City were abolished, and a portion of the work of those positions was taken over and performed by the Assistant Agent, who was under neither the clerks' agreement or the telegraphers' agreement.

Held: "The removal from the scope of the current agreement of the work assigned to the Assistant Agent was done in violation of that agreement * * *."

Award No. 751 involved also the same parties and the same agreement that is involved in this claim. In that Award, the position of General Clerk at Wichita, Kansas, was abolished, and some of the remaining work was assigned to the Agent, who was not under either the clerks' or telegraphers' agreements.

Held: The action of the Carrier was in violation of the scope rule of the agreement, and this was so, even though previous to establishing the abolished position of General Clerk, this clerical work was done by a person not under the clerks' agreement.

The above awards are on all fours with the claim in question except in those two awards the agents are not under the telegraphers' agreement, while in this claim he is under the telegraphers' agreement.

As previously stated, the Carrier relies mainly on Award No. 615. In that award the parties were the Clerks and the Southern Pacific Lines. The facts in that award were that subsequent to 1927, the position of Cashier (under the Clerks' Agreement) was abolished, and the work remaining was given to a Telegrapher-Clerk who was under the telegraphers' agreement.

Held: There was no violation of the clerks' agreement. Among other things, the opinion dealt with a one-man operated station, and held that if any telegrapher's work remained, the work should be under the telegraphers' agreement; but when the telegrapher's work ceased to exist, the position should be held by a person under the clerks' agreement.

The facts in that award are distinguishable from the facts in the claim before this Board because here there is from nine to eleven station employes employed.

In ruling that case, the opinion states:

"It not only is proved but is a matter of common knowledge that for many years even before the Clerks' Organization had national recognition and perhaps from the inception of the industry—certainly since the beginning of the Telegraphers' agreements, telegraphers have been required and have had the right to perform clerical duties. So definitely was this situation recognized that, in promulgating the rules which gave the Clerks' Organization national recognition, the Railroad Administration in the scope rule promulgated by it parenthetically excepted such work performed by employes subject to the telegraphers' agreement; while this exception no longer appears in the scope rule, the conditions in this respect have not changed since the first Clerks' Agreements."

In other words, this quotation says the original Clerks' agreement exempted clerical work performed by telegraphers who were under the telegraphers' agreement, yet that exception no longer appears in the scope rule of the clerks' agreement, but the agreement must still be ruled the same. This is true whether the scope rule does or does not contain the exception.

If this is what the opinion means, this Referee cannot agree with it. To say that an agreement with an exception in it should be ruled the same as a subsequent agreement that eliminated the exception, is not sound.

This Board has repeatedly held that a Carrier cannot abolish a position under an agreement and assign the work to employes under a different agreement or under no agreement.

The Board cannot say that because the Agent at Wynne was under the telegraphers' agreement, the clerical work could be assigned him; but, it could not be assigned him if he were not under the telegraphers' agreement. Logically, there could be no such distinction.

The Board holds that the controlling facts in this claim are governed by Awards Nos. 637 and 751, which involved the same contract and the same parties.

The Board recognized the fact that every employe of a Carrier, from the President to a Section Foreman, has a right to do clerical work that is incidental to his duties. But, it also holds that it is a violation of the scope rule for the Agent in question to do the work that was formerly done by the abolished clerical position. (See Awards Nos. 751 and 1254.) Work not under these abolished positions can still be performed by him.

The views expressed in this opinion are in harmony with the recent Award No. 1608. The facts in that case are that a position of a Clerk at Holland, Michigan, was abolished, and the remaining work was assigned others including the Agent and Relief Agent. The Agent was not covered by the telegraphers' agreement, but the Relief Agent was. It was held to be a violation of the agreement, yet there was no distinction made between the employe who was under the telegraphers' agreement and the employe who was not under that agreement.

There is no exception in the agreement in question in reference to telegraphers, and the Board holds the agreement was violated, and any operating rules of the Carrier contrary to this agreement must give way to the agreement.

This Board has held that the representatives may file claims in behalf of unnamed employes as was done in this claim. (See Award No. 137.)

From what has been said, it follows that the claim must be sustained.

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 Carrier has violated the current clerks' agreement as contended by the petitioner.

AWARD

Claim (1, 2, and 3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1943.

DISSENT TO AWARD 2071, DOCKET CL-2016.

This opinion and award disregard the clear intent and purpose of the Agreements in effect, and the practices and customs of long standing under said Agreements. To practical railroad men it is not necessary to point out the error of this award.

From the earliest history of the transportation industry, Agents covered by the Telegraphers' Agreement have performed clerical work and this practice was well known and understood by the parties when entering into Agreements. Those practices and conduct of the parties constituted an interpretation of the Agreements, and the interpretation thus placed upon the Agreements and rules by the parties to the Agreements is evidence of the greatest probative value as to what the parties mutually intended the Agreements to mean.

The referee chooses to disregard all of this historical background and relies primarily on some few isolated awards (637, 751 and 1608 being noted) of this Division, which are distinguished as even the Opinion observes, and then disregards the intent and meaning of the Agreement here involved as evidenced by the history of its negotiation, the practice theretofore and thereunder, and as confirmed by other awards having true analogy to the question presented. A clear and comprehensive digest of that which did give the correct unchanged understanding and universal application of the relation between the Clerks' and Telegraphers' Agreements was contained in the Opinion of Award 615 where there was no distinguishment from the instant case on the question at issue; it cannot be said with reason, logic, or justice, that it was the intention of these parties to construe their Agreement otherwise. The disregard of all that historical background, practice and understanding represents error. The award results in injustice, and is not supported by the Agreement or facts of record.

/s/ **A. H. Jones**
/s/ **R. H. Allison**
/s/ **C. C. Cook**
/s/ **R. F. Ray**
/s/ **C. P. Dugan**