

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, 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 on July 14th, 1942, per Superintendent's clerical Bulletin No. 25, which referred to Superintendent's Bulletin No. 23, it assigned Clerk V. A. Crowley to the position of General Clerk at Camden, Ark., rate \$5.94 per day, six days per week, and failed and refused to release Clerk Crowley from the position of Assistant Claim Clerk, which he then occupied at Alexandria, La., in order that he could go to and assume the duties of the job to which he had been assigned, thus denying this Clerk the enjoyment of his seniority rights due to the failure of the Carrier to comply with the provisions of the Clerks' Agreement.

2. When on July 30th, 1942, on which date it relieved Clerk, Mr. Crowley from the position of Assistant Claim Clerk at Alexandria, it arbitrarily placed him upon the position of Claim Clerk at Alexandria in lieu of permitting him to go to and assume the duties of the General Clerk position at Camden, Ark. to which he was assigned per Superintendent's Bulletins Nos. 25 and 23 on July 14th, 1942 and failed and refused to compensate Clerk Crowley for living expenses incurred at Alexandria amounting to \$48.22 as claimed by him during the period July 30th to August 22nd, 1942 upon which date (August 22nd, 1942) Mr. Crowley was released at Alexandria and permitted to go to his assigned position at Camden, thus denying this Clerk the enjoyment and benefit of his seniority rights due to the failure of the Carrier to comply with the provisions of the agreement.

3. That Clerk V. A. Crowley shall be compensated for living expenses incurred July 30th to August 22nd in amount \$48.22 as claimed by him in statement of claim submitted to the Superintendent per Employees' exhibits C-1 and C-2.

EMPLOYEES' STATEMENT OF FACTS: On July 6th, 1942, the Division Superintendent, per his Bulletin No. 23, designated as Exhibit "A," advertised for bids the position of General Clerk, Camden, Ark., rate \$5.94 per day, six days per week, assigned hours 8:00 A. M. to 12:00, 1:00 P. M. to 5:00 P. M., bids to be received until and inclusive of 5:00 P. M., July 11th, 1942.

OPINION OF BOARD: This docket presents another case of delay in transferring an employe to a new position to which he had been assigned on bid. The applicable agreement is the same agreement which we considered in docket CL-2249, Award No. 2263.

The facts presented by this record, however, are not the same. Here the record shows that the new position was assigned to the employe on July 14th; and that on the same day his old position was bulletined by the Carrier. In its submission the Carrier states "Account of shortage of experienced clerical help and our inability to employ clerks in this territory due to man power shortage account war conditions, it was not possible to relieve Mr. Crowley off the assistant claim clerk's job at Alexandria until July 30th." This statement by the Carrier is not controverted by the Employes. We are of the opinion that under the facts shown by this record the Carrier could not reasonably transfer Crowley prior to July 30th. On July 30th, however, the record clearly shows that it was possible to transfer Crowley to his assigned position because the Carrier on that date relieved him from his old position. On that day he could have been and should have been transferred to his newly assigned position. Failure to so transfer him was a violation of the Agreement.

For this violation of the agreement the employe should be compensated for his net monetary loss. In computing this amount for the period July 30th to August 22nd credit should be given for the difference in the rate of pay between the two positions, 65c per day, and for the living expenses he would have incurred at Camden, Arkansas.

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 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 as alleged in Claim 2.

AWARD

Claim 2 sustained. Claim 3 sustained to extent indicated in opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.

DISSENT TO AWARD 2265, DOCKET CL-2251

We dissent for the same reasons stated in dissent to Award 2263, Docket CL-2249.

(s) A. H. Jones
(s) R. H. Allison
(s) R. F. Ray
(s) C. P. Dugan
(s) C. C. Cook