

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

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 assigned the work of calling crews at Horace, Kansas to employes not covered by the scope of the Clerks' Agreement and who hold no seniority rights thereunder entitling them to perform said work.
2. When it failed and refused and continued to refuse to place the work of calling crews under the provisions of the Clerks' Agreement following the formal protest and claim filed with the Division Superintendent on May 30th, 1942, by the Division Chairman.
3. That the employes performing the work of calling crews at Horace, Kansas shall be compensated for the difference in the amount of forty-nine cents (49¢) per hour or \$3.92 per day, which they were and are being paid as "mechanical laborers," and the rate of \$4.36 per day or forty-four cents (44¢) per day for each day including Sunday and holidays, effective May 30th, 1942 on which date the dispute and claim was formally presented to the Division Superintendent and thereafter until the dispute is disposed of and the claim satisfied, and
4. That the work here involved be established under the scope of the Clerks' Agreement and assigned to employes entitled to perform same pursuant to agreement provisions.

EMPLOYEES' STATEMENT OF FACTS: Horace, Kansas is a division point on the main line of the Central Kansas—Colorado Division of the Missouri Pacific Railroad located approximately 172 miles west of Hoisington, Kansas and approximately 166 miles east of Pueblo, Colo.

The Missouri Pacific Railroad does not maintain any force at Horace, Kansas, subject to the scope and operation of the Clerks' Agreement.

Following a check made on the ground at Horace, Kansas by the General Chairman during the latter part of September 1936 the Division Chairman on October 7th, 1936 in conference with the Division Superintendent voiced formal protest with the Superintendent with respect to the use of mechanical

denied by your Honorable Board, and certainly there is no justification for such a claim as herein presented by the Clerks' Organization that a laborer at a point where there are no forces employed covered by the agreement between the Railroad and the Clerks' Organization cannot call a crew during his tour of duty as a laborer.

The Carrier feels that the Employees' request and monetary claim is not supported by the rules of its agreement with the Clerks' Organization dated August 1, 1926 and that it should properly be denied.

OPINION OF BOARD: This Docket presents the claim of the Clerks' Organization that the Carrier has violated the Scope Rule of the applicable Agreement by assigning the work of calling crews at Horace, Kansas to "mechanical laborers" not covered by the agreement. The organization asks that this Division compel the Carrier to establish this work at this station under the scope of the Clerks' Agreement and that the laborers who have been doing this work be compensated for the difference between their pay and the rate established by the wage agreement for crew callers.

Horace, Kansas, is a small community. The crews called, when laying over there stay either at the Y. M. C. A., a small hotel, boarding house or bunk houses, all of which are in close proximity to the station. No clerical force is employed at this station. The principal work of the three laborers who have been calling the crews is cleaning fires, applying grease and disposing of cinders from locomotives. None of the three spends as much as four hours in his shift calling crews.

The Organization relies chiefly on the fact that crew callers are expressly mentioned in group 2 of Rule 1 as one of the classes of employees embraced in the Scope Rule of the Agreement. It is admitted that this classification has appeared in the Scope Rule of the Clerks' Agreement continuously since 1920. Rule 2 which defines or gives the qualifications of certain classes of clerical employees does not attempt to define crew callers or set up rules as to qualifying employees as such.

The situation at Horace has existed for many years and this Docket appears to be the first claim presented by the Organization that the work at this station belongs under the Agreement. The failure of the Organization for more than twenty years to make any claim to the work at Horace would seem to indicate rather conclusively that it was not the intention of the parties that the work of calling crews at such a station be considered as coming under the Agreement.

When the Agreement fails to define crew callers we must resort to the common definition or understanding of the term. We would not ordinarily speak of a person as a crew caller if he only spent a small portion of his time at that work and the major portion of his time at some other work. The fact that the Employees made no claim to this work for so long would indicate that they have interpreted the Agreement as not applying to positions when the major portion of the work of the position did not consist of calling crews.

Where the intention of the parties in the Agreement is not clear, their interpretation as shown by their actions is persuasive as to their intention.

In their claim the Employees ask that this work be "placed" or "established" under their Agreement. This we have no power to do. If the Agreement by its terms did not "place" the work under the Agreement, it can only be placed under the Agreement by the negotiation of the parties. This Board can only interpret and apply agreements. It cannot change them at the request of either party.

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 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 did not violate the Agreement as alleged.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of September, 1943.