

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier disregarded the provisions of Section 4 of Wage Arbitration Award dated August 17, 1927, and the intended purpose thereof, when requiring or permitting Miss Marjorie Lee Strunk to qualify herself for position of switchboard operator in local freight office at Kansas City, Missouri, on her own time and at her own expense.

(b) Miss Marjorie Lee Strunk be compensated at beginners' rate of \$3.63 per day on April 11, 13, 14, 15, 16, 17, 18 and 21, 1942, dates on which she was required to familiarize herself with the operation of the switchboard and acquaint herself with the basic requirements of the assignment before being assigned as relief operator and subsequently compensated at the beginners' rate.

(c) Miss Marjorie Lee Strunk be given a clerical seniority date on the Kansas City Terminal Division roster of April 11, 1942, the first date she reported at the local office and was permitted to function in the capacity of an apprentice switchboard operator.

EMPLOYEES' STATEMENT OF FACTS: Present clerical seniority date of Miss Marjorie Lee Strunk as indicated on the January 1, 1943, Kansas City Terminal Division clerical roster, is May 18, 1942, listed as switchboard operator.

On each of the following dates, April 11, 13, 14, 15, 16, 17, 18, and 21, 1942, Miss Strunk reported at the Wabash local freight office in Kansas City to learn the operation of the switchboard by sitting in with the regular assigned operator, and under the instructions of the regular operator, operated said switchboard; no compensation being allowed Miss Strunk for such services.

Section 4—Wage Award—Docket C-159, United States Board of Mediation, effective August 17, 1927, provided that employees without previous clerical experience as a clerical worker, hereafter entering the service and filling positions of clerk or machine operator shall be paid on the following basis:

First six months — \$2.35 per day
Second six months — \$3.19¼ per day

and thereafter shall be paid the established full rate of pay for the position occupied.

SUBJECT TO AND WITHOUT WAIVING THE FOREGOING EXCEPTION, THE CARRIER MAKES THE FOLLOWING STATEMENT ON THE MERITS.

The alleged claim which has been presented by the Committee in favor of Miss Marjorie Lee Strunk is without basis under the rules of the Schedule for Clerks.

There is no rule in that agreement which provides for or contemplates that individuals who are permitted to sit in on positions with the regularly assigned incumbent for the purpose of familiarizing themselves with the duties of some particular position or positions will be allowed compensation while so engaged, and that fact has heretofore been recognized by the Committee.

When consideration is given to that fact, and the further fact that Miss Strunk performed no service for the Carrier on the dates in question, it is obvious that the alleged claim set up in the Committee's ex parte Statement of Claim is without foundation.

As a matter of fact, and as shown by the Carrier's Statement of Facts, Miss Strunk requested the Division Superintendent to permit her to sit in with the regular P.B.X. operator in order that she might learn the operation of the switchboard, with the definite understanding that she would not be compensated for the time engaged in familiarizing herself with the operation of that board.

Attention of the Board is also directed to the fact that the alleged claim referred to herein was originated by the Committee and not by the individual in whose favor claim is made. In that connection it is the position of the Carrier that all monetary claims should be originated by the individual involved and not by the Committee as was done in this instance.

It has heretofore been the practice in the application of the rules of the Schedule for Clerks to permit individuals to sit in on positions covered by that agreement with the regularly assigned occupant in an effort to familiarize themselves with the duties of the position involved; however, in no instance has the Committee contended that such individuals were entitled to compensation, notwithstanding the fact that the existing agreement, or a similar agreement, has been in effect for more than twenty years.

When consideration is given to the foregoing, it is obvious that the alleged claim set up in the Committee's ex parte Statement of Claim is without basis under the rules of the Schedule for Clerks, and, therefore, the contention of the Committee should be dismissed and the claim denied.

OPINION OF BOARD: There is nothing in the Agreement nor in Section 4 of the Wage Arbitration Award, Docket C-159, United States Board of Mediation, which expressly provides that individuals may not be required nor permitted to qualify themselves for certain positions on their own time. However, (1) the Agreement admittedly covers all those performing services for the Carrier in the positions included in Rule 1, (2) a temporary assignment, as defined by Rule 7, Section (b), second paragraph, of this schedule, exists whether the temporary assignee does the work in the presence or the absence of the regular employe, and (3) it is not clear how one can perform the duties of a position, even for the purpose of learning them, without filling the position or performing service for the Carrier.

Moreover, it was in recognition of the fact that beginners in clerical positions occupy somewhat of an apprentice status during which their services are not worth the full compensation for the position, that the above Wage Arbitration Award established a six-month period at a beginner's rate, and a second six-months' period at an increased rate, but still at less than the full rate for the position. Thus, the present case seems clearly to come within the intent of the Agreement and the Award, and not within any recognized exception from them.

It seems no doubt that in this instance it was at her own request that the employe was allowed to learn the work on her own time, that both the Employe and the Carrier acted in good faith, and that it is the Organization on the Employe's behalf, and not the Employe personally, who makes claim for the pay and seniority rights; however, regardless of intent, neither the Carrier nor the individual employe can act to alter the Agreement without the Organization's consent, and the only practical method of preserving its effectiveness is to insist on the enforcement of its terms whenever necessary.

The incident involved a violation of the Agreement and the Award, and 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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1943.

DISSENT TO AWARD NO. 2428, DOCKET CL-2433.

The individual here involved was not an employe of the Carrier, and as indicated by the undisputed evidence, sought the privilege of sitting in with the regular switchboard operator to familiarize herself with operation of the switchboard. There was no requirement that she do so. While admitting the Agreement contains no prohibition against such action, the Opinion declares compensation must be allowed under such circumstances. A combination of various rules is cited in support of such declaration. To apply such reasoning to the facts here involved is not supported by the clear meaning and intent of the rules. The individual involved was not occupying a position, nor rendering service for or at the request of the Carrier. To stifle such initiative on the part of individuals, whether entering or already in the employ of the Carrier, is not interpreting the real purpose and intent of the Agreement but is imposing additional requirements which can only have detrimental results to all parties concerned.

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