

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 EMPLOYEES**

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement.

1st. When during October and November, 1942, it removed the work of preparing and writing up scale report for 1940 scale tickets, located in the Grand Forks Yard Office, out from under the scope and operation of the Agreement and assigned said work to an employe not covered by the Agreement and who holds no seniority rights thereunder, entitling him to perform said work.

2nd. That the regular clerical employe, Mr. Archie Lufkin, adversely affected by reason of this violation of Agreement be compensated for thirty (30) hours overtime at time and one-half rate, which was the amount of overtime that would have been required of this clerk in performing this work if it had not been removed from the scope of the Clerks' Agreement.

JOINT STATEMENT OF FACTS: During the period from October 19 to November 6, 1942, work consisting of 1490 scale tickets which had to be written up on the scale report was removed from the Yard Office where it is customary to have this work performed by Mr. Archie Lufkin, a Yard Clerk, and was taken to the Freight House and performed by one Mr. G. A. Hankerson, Perishable Freight Inspector.

Mr. Hankerson is not an employe under the Clerks' seniority roster of the Station and Yard Service of the Dakota Division, and our Schedule has never been applied to him.

POSITION OF EMPLOYEES: Under date of October 29th, and November 7th, Mr. Lufkin submitted time slips making claim for overtime payment on account of this work being performed by the Perishable Freight Inspector, as follows:

"Claim 15 hours overtime account 740 Scale Tickets prepared and written up on Scale Report by G. A. Hankerson, Perishable Freight Inspector, at Freight Depot." (Signed) Archie Lufkin, Nov. 7, 1942.

"Claim 15 hours overtime account 750 Scale Tickets prepared and written up on Scale Report by G. A. Hankerson, Perishable Freight Inspector, at Freight Depot." (Signed) Archie Lufkin, Oct. 29, 1942.

On November 10, 1942, the Division Superintendent wrote Mr. Lufkin declining payment, as follows:

"I have your letter of November 7th in connection with your overtime slip of October 29th and November 7th. There was no work

holding seniority as a clerk. The work in question had gotten so far behind that it was necessary to bring it up to date without further delay. Mr. Lufkin and other clerks in the Yard Office were fully occupied not only during regular working hours, but during overtime hours as well, with other duties pertaining to their positions and there was no one on the extra list.

As originally stated, the Carrier is aware of the principles held by your Board in circumstances where clerical work normally performed by schedule employees has been performed by other than schedule employees, but the Carrier holds that in the particular circumstances surrounding this case the claimant is not entitled to the penalty payment sought.

OPINION OF BOARD: This is a joint submission. There is no dispute on the facts. From October 19th to November 6, 1942, work consisting of writing up 1490 scale tickets on the scale report was removed from the Yard Office, where it had ordinarily been performed by the claimant, a Yard Clerk, and was given to a Freight Inspector, who was not covered by the Clerks' Agreement.

The Carrier justifies its action, because the work of the claimant was far behind, and because it was necessary to provide experienced clerical assistance for that particular work and no one was available who came under the Clerks' Agreement. Work belonging to those under an agreement cannot be given to those not covered by the agreement. This rule is so well established that a citation of authority is hardly necessary.

To accept the Carrier's justification for what is clearly a violation would mean that agreements are to be disregarded when, under stress of conditions, it is more convenient to do so. It was said in Award 2282: "If we begin that practice, where, and in what circumstances, will we draw the line as to what is reasonable and what is not." Unless we are to have chaos in this industry, the agreements must be enforced regardless of how the shoe pinches.

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 employee involved in this dispute are respectively carrier and employee 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 in assigning work belonging to the Clerks to an outsider.

AWARD

Claim (1) sustained. Claim (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.