

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that Carrier violated the rules of the Clerks' Agreement when on May 6, 1938, it abolished the position of Freight Clerk, Visalia, California, and assigned the duties of said position to an apprentice operator who is not covered by the Clerks' Agreement; and,

(2) Claim that all employees involved in or affected by said violation of rules shall be fully compensated for monetary losses sustained as result thereof for the period from May 6, 1938, to August 22, 1938.

EMPLOYEES' STATEMENT OF FACTS: Prior to May 6, 1938, the station force at Visalia consisted of the following:

	Hours	Rate
Agent	8:00 A.M. to 5:00 P.M.	\$ 1.00 per hour
Operator-Cashier	8:00 A.M. to 4:00 P.M.	.79 " "
Freight Clerk	6:30 A.M. to 3:30 P.M.	5.67 per day
Apprentice Operator	7:00 A.M. to 4:00 P.M.	60.00 per month

Position of Agent and Operator-Cashier are covered by Carrier's agreement with the Order of Railroad Telegraphers. Position of Freight Clerk is covered by Carrier's agreement with the Brotherhood of Railway Clerks. Position of Apprentice Operator was not covered by any collective agreement.

The principal and preponderating duties and responsibilities which covered and controlled the classification and rate of pay of position of Freight Clerk consisted of the following:

- Receiving and delivering L.C.L. freight.
- Checking cars in yards.
- Maintaining demurrage records.
- Compiling 44, 87 and 89 reports.
- Compiling switching settlement statements.
- Billing freight.
- Making abstracts and 450 reports.
- Handling milling and transit records and other miscellaneous station duties customarily assigned to a position of this payroll classification.

clerical work, the position obviously to be in Class 3 and to be filled as provided in the following that was agreed to between the parties in the application of the above identified Memorandum of Agreement of July 27, 1933:

"Vacancies and/or new positions shall not be advertised but, instead, filled by moving up the force at the points where the vacancies or new positions occur and recalling the senior qualified off-in-force-reduction employees, subject to Section 13 of Article III of the Agreement, for the resulting vacancies or new positions."

At the conference referred to, the representative of the Brotherhood informed the representative of the Carrier that the proposal of the Carrier to apply the provisions of the Agreement was not acceptable.

No employee of the Carrier has been shown to have suffered a monetary loss. The Carrier will compensate an employee who can be shown to have been entitled to a position that should have been established effective May 7, 1938 under the applicable rules of the Agreement effective December 1, 1929 and for whom a monetary loss can be proven.

The claim is neither for the establishment of any position of clerical worker nor for the re-establishment of the position of Freight Clerk, but for reimbursement of monetary losses alleged to have been sustained by unidentified parties in unnamed amount. It is not claimed that the employee displaced from the Freight Clerk's position abolished effective May 7, 1938 sustained any monetary loss.

The claim is confined to the period May 7, 1938 to August 22, 1938. There was established at Visalia on August 16, 1938 a position of Freight Clerk.

POSITION OF CARRIER: The claim for monetary loss should be dismissed, in the light of the fact that the employees have rejected the Carrier's offer to comply with the applicable terms of the Agreement on the basis that there should have been established May 7, 1938, effective upon the abolishment of the Freight Clerk's position, a proper position under the terms of the Agreement, and an employee eligible therefor placed thereon, which is all that the provisions of the Agreement between the parties require. Moreover, because the employees have both declined and failed to name any party having rights under the Agreement to an appropriate position and, also, have failed to show that any employee having rights under the Agreement has sustained a monetary loss by reason of the Carrier's admitted failure to comply with the applicable rules of the Agreement, no valid Award calling for the payment of money can issue unless the employees for whose benefit it is made are specifically named. See Award 906. Any Award that issues should require that a claim for monetary payment must, in order to be enforced, show that the names of the parties for whom claim is filed were made known to the Carrier prior to the filing of the claim with the Board.

The Carrier has not been served with nor permitted to see a copy of the Employees' submission, consequently it is not informed with respect to the alleged facts, contentions or allegations which the Employees' ex parte submission may contain. The Carrier, therefore, has dealt only with those contentions and allegations presented to it by the Employees and such other matters as in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to present evidence in rebuttal of any allegations, facts, or contentions that may be made by the Employees in their ex parte submission or to any other submission which the Employees may make to your honorable Board in this case.

OPINION OF BOARD: The parties agree that in all essential respects the question presented by this case is identical with that disclosed by Docket No. CL-2387, decided by Award No. 2569. On the authority of that award the petitioner is entitled to prevail.

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 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 19th day of May, 1944.