

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, 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 Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When it assigned to Yard Clerks at Collinston, La., namely:

Clyde Adams,	rate \$5.84 per day,	5:00 A. M. to 9:00 A. M.
		10:00 A. M. to 2:00 P. M.
T. Eldridge,	rate \$5.59 per day,	2:00 P. M. to 10:00 P. M.
B. C. Miller,	rate \$5.59 per day,	10:00 P. M. to 6:00 A. M.

the performance of the work of selling tickets, and assume the fulfillment of the duties and responsibilities of "Ticket Clerks" and refused and continued to refuse to reclassify the positions to those of Ticket Clerk, and adjust the rates to that of \$6.09 per day which was the minimum rate for Ticket Clerks on the Little Rock—Louisiana Division.

2. That Clerks Adams, Eldridge and Miller, and any other occupant or occupants of the positions during the period the selling of tickets was a requirement of their duty and work, shall be compensated for the difference in the rate paid as Yard Clerk and the minimum Ticket Clerk rate of \$6.09 per day, plus such amounts as are involved in the increase granted February 1st to December 26th, 1943, from and inclusive of June 19th, 1943, the date the Division Chairman of the Clerks' Organization formally filed protest with the Division Superintendent, to August 17th, 1943, when the Carrier discontinued requiring these clerks to sell tickets per Trainmaster Dollar's wire to Agent Richards at Collinston, La., which was filed at 3:10 P. M., on Aug. 17th, 1943.

NOTE: The Trainmaster's wire, (See Employes' Exhibit "G") filed at 3:10 P. M. on August 17th, 1943, discontinued the use of the second and third trick clerks in selling tickets that day, but the first trick clerk, 5:00 A. M. to 2:00 P. M. is included in the claim for August 17th, 1943, account wire received after he had finished his day's work which included the selling of tickets.

EMPLOYES' STATEMENT OF FACTS: The Carrier has maintained a station force at Collinston, La. subject to the scope and operation of the Clerks' Agreement for many years. There was classified, listed and rated the

There is shown, marked Carrier's Exhibit No. 1, a copy of agent's August, 1943 monthly report. This particular month is representative and selected for no other purpose than to give to your Honorable Board a picture of the tickets handled at that station. It will be observed that practically all of the ticket work is local ticket sales. In August, 1943 there were but 38 inter-line tickets sold and 1302 local tickets sold. This exhibit is submitted to support the Carrier's position that all of the units of work involved in the handling of tickets at Collinston are not sufficient to justify the employment of a ticket clerk or to change the rates of pay of the clerks at that station to the rates paid clerical forces at such stations as Dermott and McGehee where ticket clerks are employed and devote at least a majority of their time to that of a ticket clerk.

Carrier feels that the Claimants' contentions in this case should properly be denied by your Honorable Board.

OPINION OF BOARD: The claim here is based upon the allegation that the Carrier violated the Clerks' Agreement when it assigned yard clerks at Collinston, La., to perform the work of selling tickets and fulfill the duties and responsibilities of ticket clerks. The time consumed in the sale of tickets averaged approximately one hour and thirty minutes per day on each position, however, the work of selling tickets was spread over the entire shift with the result that the duties and responsibilities obtained for the whole day in each instance.

The claim is presented under Rules 68 and 66. We quote Rule 66:

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee, due to a temporary increase in the volume of work does not constitute a temporary assignment."

This Board was confronted with a similar question in Award No. 751; in the words of Judge Swacker, we quote:

"The assignment of the three hours' work to a lower-rated employee was a violation of the intent of Rules 66, 68 and 76. The negotiated rates covering positions of course took into consideration the attendant duties, and if after agreeing upon the rates the carrier could switch the duties around in this manner, it could completely nullify the wage scale.

The four-hour line of demarcation between class 1 and class 2 employees provided by the scope rule has no bearing in the matter. If it were permissible to parcel out regularly three hours as here, no reason is perceived why it could not also be permissible to assign the whole eight hours out to three lower-rated employees in allotments of three, three and two hours and thus procure the doing of work agreed to be worth \$5.39 per day for \$4.79."

See also Award No. 2270.

The General Superintendent of the Carrier in his letter of Aug. 16, 1943, states:

"In my opinion the classification of these clerks is entirely wrong and they should be classed as general clerks. While we possibly were out of line in using these men to sell tickets, * * *."

We can come to no other conclusion but that the Carrier violated the Agreement in requiring the employes involved to assume the responsibilities of ticket sellers and, since the work was done at various times during the day, the employes are entitled to pay in compliance with the provisions of the Agreement. In this case, the Clerks' Organization only ask that claimants be paid from the date the Division Chairman of the Organization formally filed protest, to wit—from June 19, 1943, to the date of correction of the violation.

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 as set out in the Opinion and the Employes are entitled to be compensated from June 19, 1943, to the date of termination of the violation, one position being on Aug. 16, 1943, and the other on Aug. 17, 1943.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.