

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, 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 Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When effective Sunday, November 7th, 1943, and thereafter on subsequent Sundays and holidays it refused and continued to refuse to pay train mail handlers operating on trains 17, 18 and 4 on the Arkansas Division for work performed on Sundays and holidays at the rate of time and one-half.

(a). Paul Gourtney operating on train 18, leaving Little Rock, Ark. at about 9:00 P. M. to Corning, Ark. arriving about 1:30 A. M. daily, and also on train 17 leaving Corning, Ark. about 3:45 A. M. arriving at Little Rock, Ark. about 7:50 A. M. daily.

(b). E. E. Baker operating on train 4 leaving Texarkana about 4:00 A. M. daily arriving at Benton, Ark. at about 6:10 A. M. daily, and also leaving Benton, Ark. on train 17 at about 9:05 A. M. daily and arriving at Texarkana about 12:45 P. M. daily.

(Time of arrival and departure of trains varies according to conditions.)

2. That Train Mail Handlers Gourtney and Baker and/or other occupants relieving them from time to time shall be compensated for work performed on Sundays and holidays at the rate of time and one-half retroactive to and including November 7th, 1943, claims to continue until violation of agreement is removed and claims satisfied.

EMPLOYEES' STATEMENT OF FACTS: For many years the work of handling of mail on certain passenger trains on the Arkansas Division has been assigned to and performed by employees subject to the scope and operation of the Clerks' Agreement embraced in Group 2, described as "baggage and mail handlers" at the Little Rock Baggage and Mail Station.

This group of employees comprise a part of those designated as coming within Group 2 of Rule 1 of the Clerks' Agreement, i. e.,

"Other office and station employees, etc."

and who are carried on a separate Clerks' Group 2 seniority roster.

"This question was discussed with Assistant General Manager, Mr. Clements in conference on June 3rd, and while he would not and did not agree with us that the work belongs to our craft as defined by any agreement provisions, we did understand that it was not his intention to disturb the arrangement that is now, and has been in effect for several years wherein our people are performing this work."

The Carrier's contentions as to the non-applicability of the July 1, 1943 agreement to the instant dispute are supported by Exhibits 1, 2 and 3, all of which had to do with the agreement between the Carrier and the Clerks' Organization preceding the July 1, 1943 agreement. This preceding agreement was effective August 1, 1926. Insofar as the question at issue in this particular case is concerned, there was no change made in the July, 1943 agreement that differed from the provisions of the preceding agreement of August 1, 1926. The latter provided in the scope rule thereof that it governed the hours of service and working conditions of office and station employees such as baggage and parcel room employees and laborers employed in and around stations, storehouses and warehouses. The coverage or scope rule of the 1926 agreement, as well as the 1943 agreement, was limited therein to clerical, office, station and storehouse employees. Neither included train mail handlers or men employed by the Carrier to handle mail and baggage on passenger trains.

The Carrier feels that the Employees' claim should be properly denied by your Honorable Board on the basis that they are seeking through your Board to extend the provisions of their working agreement with the Carrier to a class of employees exempted therefrom, and to sustain their contentions would be an act contrary to the limitations of your Honorable Board in awarding decisions on questions growing out of grievances or out of the interpretation or application of agreements concerning rates of pay rules or working conditions of employees. This dispute does not grow out of the application of an agreement between the Complainant Organization and the Carrier for the specific reason that the class of employees for whom the claim is filed is not a class of employees covered by the scope rule of the agreement between the Complainant Organization and the Carrier.

OPINION OF BOARD: For many years the work of handling mail on certain passenger trains on the Arkansas Division has been assigned to and performed by employees subject to the scope and operation of the Clerks' Agreement embraced in Group 2, designated as "baggage and mail handlers" at the Little Rock Station Baggage and Mail Room. These employees hold seniority rights under said Agreement in Clerks' Group 2. The two employees upon behalf of whom claim for compensation is here made, viz., Paul Gourtney and E. E. Baker, are shown on the seniority roster with the following seniority dates: the former December 14, 1918, the latter November 12, 1924.

Employees of this class and holding such seniority rights on the Arkansas Division have been used regularly as train mail handlers as far back as November, 1926, and continuously since then to May 9, 1939, on Trains 17 and 18. Like service, with the use of employees from this same group and holding seniority rights under the Clerks' Agreement, was instituted on Trains 4 and 17 in October, 1937. Seniority rights between these employees, as provided for in the Clerks' Agreement, had been observed by the Carrier until 1939, when it was discontinued. During all this period and until the current Agreement, July 1, 1943, the rule covering Sunday and holiday service provided only for straight time rates for work regularly assigned on those days. Since 1927 the Carrier has applied the Clerks' wage decisions or agreements, the Clerks' vacation agreement and overtime rates of pay to these employees until November 7, 1943. Between July 1, 1943, the effective date of the current Agreement, and until November 7, 1943, the Carrier also applied Rule 26 providing an overtime rate for Sundays and

holidays to them. It was because the Carrier has, since November 7, 1943, ceased to apply Rule 26 to the employes engaged in this service, that this instant dispute is before the Board.

The record clearly shows that the question of whether certain rules of the Clerks' Agreement apply to the employes in this dispute has been in controversy for several years.

It is not disputed that if Petitioner's contention is sustained it must be founded upon the premises that positions worked by the employes in question come within the Scope Rule of the current Agreement. For that reason certain pertinent portions of Rule 1, the Scope Rule are quoted. They read:

"These rules shall govern the hours of service and working conditions of the following classes of employes that come within and under the craft or class of clerical, office, station, and storehouse employes subject to the exceptions noted below.

"Group 1. Clerks:

(a) Clerical workers.

(b) Telephone switchboard operators and machine operators of office or station mechanical equipment used in the performance of clerical work.

"Group 2. Other office and station employes such as:

... Baggage, mail and parcel room employes (other than those classed in group 1); ..."

No other classifications appear in the rule which can possibly be held to be applicable to mail handlers operating on trains.

Preliminary to a discussion of the merits of the controversy the writer of this opinion desires to frankly admit that on presentation of the cause he formed a tentative opinion that the Petitioner's position would have to be sustained. The arguments of the advocate of the Petitioner were logical, persuasive and convincing. However, it must now be stated that on more mature deliberation and extended examination of the record as well as decisions of this Division that tentative view has been displaced by another quite to the contrary. We turn now to a discussion of reasons responsible for such conclusion.

It has been well stated that it is not always easy to ascertain just what work is covered by an Agreement. It is on that account portions of the scope rule have been quoted. Directing attention to them it must be conceded that unless a train mail handler can be held to be a clerical worker, a telephone switchboard operator or a machine operator of office or station mechanical equipment used in the performance of clerical work, which all must agree cannot be conceived, he is not covered by the rule unless it can be found he comes within its purview by subsequent agreement or conduct of the parties. The reason for this deduction becomes obvious from examination of the latter portion of the rule which expressly provides it governs "Other office and station employes (emphasis supplied) such as: ... Baggage, mail and parcel room employes (other than those classed in group 1); ...". This being true, can it be held that train mail handlers are covered by the language to be found therein? It seems illogical to so hold. To do so, as contended by the Petitioner would broaden the Scope Rule, which is beyond the authority of this Division.

So regarded the next question is whether the rule has been extended by agreement or conduct of the parties. The only agreement suggested is one which was entered into by them in 1926 whereby they made provision for the maintenance of a Board of Adjustment and provided for the submission of disputes to such agency. In connection with that agreement it is urged that

because a dispute involving these positions was at one time submitted to the Board of Adjustment so created the positions come within the terms of the rule. That contention cannot be sustained. The Carrier was compelled by that agreement to submit such controversy but it did not thereby recognize or concede the positions came within the present Scope Rule which, it should be noted, was not then in force and effect. It is next urged that conduct or action consummated the result to which we have referred. To uphold the position it is claimed that by assigning clerks to the positions and by paying them, after the current Agreement became effective, for overtime for a period of several months such result was affected. We are intrigued by the argument but not convinced by the record. If there are awards which sustain the contention they are not cited by the Petitioner and the Referee has not found them.

Numerous awards have been cited by Petitioner as sustaining its position on the subject just mentioned but they are not in point for they deal with situations where work has been taken from a position and given to another not entitled to it under the decisions of this Division. That was not done in the instant case.

It must be kept in mind that this is not a dispute where a position has been abolished and the work assigned to employees not covered by the Agreement. Neither is it one where work has been removed from the Contract, nor does it pertain to a condition where positions were subject to the Agreement at its inception. As the Referee construes the record, it simply presents a situation where the parties failed to include the work within its Scope. This being so, it follows since nothing has transpired subsequent to the execution of the Contract, or for that matter prior thereto, to justify a decision that the involved positions have been brought within the scope of the rule, that if they are to be included therein that result must be accomplished by negotiation.

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 employees involved in this dispute are respectively carrier and employees 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 facts and circumstances disclosed by the record when applied to the Scope Rule of the current Agreement do not permit a sustaining award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1945.