

Award No. 3191

Docket No. CL-3114

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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: Claim of the System Committee of the Brotherhood that:

(1) Carrier violated rules of the Clerks' Agreement when it assigned Mr. J. V. Warnock, Chief Clerk to Agent, La Junta, Colorado, or permitted him to perform certain routine clerical duties; and,

(a) Car Clerk R. H. McNeal shall be paid on the basis of time and one-half, at rate of \$7.17 per day, for the following amounts:

November	7, 1943	2'00"
"	8, 1943	2'00"
"	9, 1943	3'30"
"	18, 1943	45"

(b) Yard Clerk J. M. Jenkins shall be paid on the basis of time and one-half, at rate of \$6.77 per day, for the following amounts:

November	10, 1943	3'20"
"	11, 1943	2'00"
"	13, 1943	2'00"

(c) Car Clerk E. Cavanah shall be paid on the basis of time and one-half, at rate of \$7.17 per day, for the following amounts:

November	12, 1943	2'00"
"	14, 1943	2'00"
"	15, 1943	3'00"
"	16, 1943	2'30"

(d) Utility Clerk M. M. Gordan shall be paid on the basis of time and one-half, at rate of \$7.17 per day, for the following amount:

November	15, 1943	4'45"
----------	----------	-------

(e) Stenographer-Clerk R. C. McCreight shall be paid on the basis of time and one-half, at the rate of \$7.17 per day, for the following amount:

November	17, 1943	2'00"
----------	----------	-------

(f) Yard Clerk W. A. Shellenberger shall be paid on the basis of time and one-half, at the rate of \$6.77 per day, for the following amount:

November	18, 1943	1'45"
----------	----------	-------

2. These and/or other employes shall be compensated for all wage losses sustained as a result of subsequent rule violations.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. V. Warnock, Chief Clerk to Agent at La Junta, a position which is wholly excepted under the provisions of the Clerks' Agreement, bearing effective date October 1, 1942, performed the following schedule and routine clerical duties at times and on the dates as specified below:

- (a) November 7, 1943—4:10 PM to 5:50 PM, making waybills, Nos. 123 to 128, inclusive, and writing up waybill records, and unloading record of CBQ 57267, and 18 other cars of sheep.
- November 8, 1943—10:00 AM to 10:40 AM, writing up waybill records, unloading and loading record of AT 50399 and 22 other cars of sheep.
- November 9, 1943—11:40 AM to 3:10 PM, checking switch lists and through wheel report for train No. 42; filling out scale tickets and pasting on waybills.
- November 18, 1943—11:15 PM to 12:00 PM, pulling waybills for fill on train No. 32, and writing up wheel report.
- (b) November 10, 1943—8:10 AM to 8:40 AM, checking industry tracks. 9:30 AM to 10:05 AM, writing up waybills and making record of live stock loaded and unloaded. 11:00 AM to 11:30 AM, securing and making record of reloading count and weights of live stock loaded.
- November 11, 1943—9:15 AM to 9:30 AM, checking industry tracks for daily yard check.
- November 13, 1943—8:40 AM to 9:00 AM, checking industry tracks for daily yard check.
- (c) November 12, 1943—11:50 AM to 12:40 PM, checking in-bound switch list of extra stock train and train No. 42. Check through wheel report for train No. 42. Check cars on head-end of Extra 1860.
- November 14, 1943—10:10 AM to 10:30 AM, securing and making record of loading and weights on 15 cars of sheep.
- November 15, 1943—8:55 AM to 9:15 AM, checking industry tracks. 11:15 AM to 11:40 AM, writing up record of waybills and record of unloading of AT-54418, and 9 other cars of live stock. 11:40 AM to 11:55 AM, pulling waybills and making record of A. V. Local.
- November 16, 1943—9:50 AM to 10:10 AM, pulling waybills and handling car desk. 11:35 AM to 11:45 AM, checking switch list and wheel report for train No. 43. 11:45 AM to 12:01 PM, making record of waybills and unloading record of live stock handled. 12:05 PM to 12:20 PM, as-sorting slip bills and handling car desk.

vision of the current agreement by the Carrier as inferred by the Employes. The Carrier has simply permitted one of its supervisory clerical employes to assist other clerical employes with a few of their minor duties. Both the supervisor and the clerical employes he assisted are covered by the scope of the Clerks' Agreement. Both may perform and do perform clerical work. The supervisor is necessarily responsible for the performance of the work of other clerical employes under his jurisdiction, and he is not restricted in the performance of clerical work by any of the terms of the Clerks' Agreement. The Employes expressly agreed that such excepted supervisory positions were covered by the Scope of the Clerks' Agreement but were excepted from certain penalty and restrictive rules of the Agreement, and they may not now evade that agreement through an appeal of a claim which seeks to restrict the duties of these supervisory employes.

Even if the Chief Clerk to the Agent involved in this dispute was not covered by the Scope of the Clerks' Agreement, as contended by the Employes, he must then, as stated before, be an official or other employe not covered thereby whom the Brotherhood representatives agreed could perform work of Class 1, 2 and 3 employes. (See Carrier's Exhibit "A"). It must, therefore, be apparent that the handling complained of was not in violation of Article XIII, Section 15 or any other rule of the Agreement.

In conclusion, the Carrier asserts that the Brotherhood's claim seeks to inject too much rigidity into railroad operation and is in complete disregard of the need for a reasonable amount of flexibility which is as equally essential to the welfare of the employes as it is to the Carrier. The claim is entirely without merit and should be declined for the following reasons:

(1) The Chief Clerk to the Agent at La Junta is covered by the Scope of the Clerks' Agreement, and may, therefore, instruct, lend a hand and otherwise assist other clerical employes under their supervision with the performance of clerical work.

(2) If contrary to the Carrier's contention, the Chief Clerk to the Agent at La Junta is not covered by the Scope of the Clerks' Agreement, it must then be held that he is one of the officials or others not covered by the Agreement as referred to in the parties' "Interpretation of Application of Articles I and II * * *" (Carrier's Exhibit "A") whom, it was agreed, could perform the work of Class 1, 2 and 3 employes.

(3) The employes have cited no rule of the Agreement or other authority, and there is none, which prohibits the incumbents of so-called excepted clerical positions listed under Exception (c) of Article I, Section 1 from assisting other clerical employes with the performance of incidental clerical duties.

(4) Neither the claimant employes identified as Messrs. McNeal, Jenkins, Cavanah, Gordon, McCreight, and Shellenberger nor any other employes suffered any loss of earnings as a result of the handling complained of in this dispute.

OPINION OF BOARD: Claimants contend that the Carrier violated the Clerks' Agreement when it permitted the Chief Clerk to Agent at La Junta, Colorado, to perform work assigned to the Clerks by the current Agreement.

The record shows that the position of Chief Clerk to Agent at La Junta was excepted from the Clerks' Agreement although the incumbent retained rights and accumulated seniority under it while he held the excepted position, the controlling provision being that part of Rule 1 (c) providing:

"The rules herein shall not apply to the following classes of positions; the incumbents thereof being subject to Article III, Sections 19-a, 19-b, 19-c, 19-e and 19-f."

The Carrier urges that the position of Chief Clerk to Agent at La Junta, although listed under the foregoing provision of Rule 1 (c), is covered by the Scope Rule of the Clerks' Agreement, and may, whenever necessary, assist other clerical employes in the performance of their duties without violating

any of the terms of the Clerks' Agreement. Except for the exclusionary effect of Rule 1 (c) this would undoubtedly be true but it appears plain to us that the position is wholly excepted from the Agreement even though the incumbent of the position retains rights under the Agreement by virtue of the same provision. The occupant of the excepted position may not, therefore, properly perform work within the scope of the Agreement. Awards 2506, 1254 and 751.

The Carrier argues in the alternative, if we should find that the excepted position was wholly outside the scope of the current Agreement, that no violation occurred because of the Memorandum of Interpretation of Application of Articles I and II of Agreement to Become Effective October 1, 1942, which Memorandum is in part as follows:

"In the application of Articles I and II of Agreement to become effective October 1, 1942, it is understood and agreed that the work of Class 1, 2 and 3 employes, referred to in said Agreement, when performed by officials and others not covered by the Agreement, incidental to or as a consequence of their official or other positions, is not subject to the provisions of said Agreement."

We think this means that officials and others not covered by the Agreement may perform work of Class 1, 2 and 3 employes without violating the Agreement if it is incidental to or arises as a consequence of their positions. The work of the Chief Clerk to Agent at La Junta was entirely supervisory insofar as the work here involved was concerned. The record further shows that this was the assigned work of Clerks under the Agreement. As such, in this case it is not work incidental to or arising out of the position of Chief Clerk to Agent. It appears clear to us that the Chief Clerk to Agent was performing work reserved to the Clerks under the current Agreement which the Agreement did not permit him to perform.

The history of the agreed upon interpretation sustains our position. Preliminary to its adoption the Carrier proposed a rule which in part provided that: "Nothing in these rules shall be construed to restrict the character of work occupants of excepted positions may perform." This was not agreed to with the result that the interpretation heretofore recited was mediated. The intent is thereby clearly shown to limit the work which the incumbent of an excepted position could perform to that which was incidental to or arose out of it. The work here done does not fall within that category. An affirmative award is required.

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 Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1946.