

Award No. 3192

Docket No. CL-3115

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The rules of the Clerks' Agreement bearing effective date October 1, 1942, were violated when on May 6, 1943, between the hours of 2:00 a.m. and 5:00 a.m., routine clerical work was performed by J. V. Warnock, Chief Clerk to Agent at La Junta, Colorado; and

(2) R. C. McCreight, Car Clerk, La Junta, shall be paid for three hours at the rate of time and one-half under the provisions of the call rule of the Clerks' Agreement, account available for duty and not called to perform the work which was done by Chief Clerk Warnock.

EMPLOYEES' STATEMENT OF FACTS: On May 6, 1943, about 2:00 a.m., at the La Junta Yard, it was necessary to weigh over track scales CNW-72158 and 14 other cars and bill ice charges on several other cars that had been iced. Instead of using clerks then on duty or calling another available clerk to perform this schedule work, Mr. Warnock, Chief Clerk to Agent, performed the work himself, although, the position he occupied is excepted from the terms of the Clerks' Agreement.

Car CNW-72158 arrived at La Junta on train 46-D at 11:05 p.m., May 5, 1943 and was lined up by Yardmaster to move forward along with the other Government loads referred to above on 1/35 which was scheduled to depart about 1:30 a.m. Chief Clerk Warnock was at the Yard Office for some time prior to McCreight's release from duty and at about 12:10 a.m. car CNW-72158 was check-weighed by him, and at the same time he called this to the Yardmaster's attention. The Yardmaster questioned the necessity of cutting this car out of 1/35 on which it was lined to move, for weighing and discussion was had concerning this matter between the Yardmaster, Chief Clerk Warnock and Car Clerk McCreight, and the Chief Clerk agreed with McCreight that account of instructions the car should be cut out and weighed. Thereupon, the Yardmaster stated "O.K. cut it out of 1/35 and we will weigh it along with the rest of the weighers and run it on 2/35 right behind 1/35." This occurred about 50 minutes before McCreight was released from further duty by the Chief Clerk.

When the switch crew was ready to start weighing the cars in question Car Clerk McNeal started to go out to the scales to weigh them but was told by Chief Clerk "not to bother with that, I'll weigh them."

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 employees.

(3) The employees 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 employees with the performance of incidental clerical duties.

(4) Neither the claimant, Mr. McCreight, nor any other employee suffered any loss of earnings as a result of the handling complained of on May 6, 1943.

OPINION OF THE BOARD: The Claimant contends that the Carrier violated the Clerks' Agreement when it permitted the Chief Clerk to Agent at La Juna, Colorado, to perform work assigned to the Clerks by the current Agreement.

The work involved was clearly that of the Clerks under the Agreement. We think that the case is controlled largely by Award No. 3191, Docket CL-3114, adopted herewith and we reaffirm our findings therein stated.

The further contention is urged in the present case that the Chief Clerk was supervising and training the Clerks on duty. The record will not sustain this view. It is therein shown that the Chief Clerk performed this work by himself and "on his own". This is not consistent with the statement that he was training or qualifying inexperienced employees. 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 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

The the current 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.