

Award No. 3222

Docket No. CL-3237

**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**

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 on May 2, 1945, Crew Caller Hazel H. Flanagan, at Omaha, Nebraska, was absent from her position during the hours of 12:00 Midnight to 8:00 A. M., rate \$5.16 per day, account death of a relative and Carrier failed and refused to permit an employ listed on the Seniority Roster, who was available, ready and willing to perform the work, to do so and be paid for same but instead removed the work out from under the scope and operation of the Clerks' Agreement and utilized a Mechanical Laborer, namely Margie John, an employe covered by the wage agreement of another craft to perform same.

2. That Crew Caller Mary A. Stanford, who was regularly assigned as Crew Caller, 4:00 P. M. to 12:00 Midnight, rate \$5.16 per day, be paid 8 hours at rate of time and one-half time—eight hours at \$.9675—\$7.74, account Carrier's actions in violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The force of clerical workers, employes covered by the scope and operation of the Clerks' Agreement, employed at the Roundhouse Office, Omaha, Nebraska, on and prior to March 1st, 1945, and subsequent to March 3, 1945, their classification rate of pay, regular hours of service assignment and seniority date as listed on the Superintendent's Clerks' Seniority Roster, Groups 1 and 2 of the Omaha-Northern Kansas Division was as follows:

Pos. & regularly assign. occupant	Scope Rule 1 Group Designation	Rate	Regularly assigned hours	Designated day of rest	Seniority date re- spective group
Engine Dispatcher M. W. Stanford	Group 1	\$6.81	8 A.M. to 4 P.M.	Wed.	9-27-23
Crew Caller M. A. Stanford	Group 2	\$5.16	4 P.M. to 12 M.	Mon.	6- 9-43
Crew Caller	Group 2	\$5.16	12 M. to 8 A.M.	Tue.	9-18-44

cation in the matter in dispute and believes that it has conclusively established that the complaint and claim in this docket are without basis or merit and therefore should be denied.

OPINION OF BOARD: On May 2, 1945, Crew Caller Hazel H. Flanagan was absent from work because of the death of a relative. An employee subject to the agreement of another craft, but holding no seniority under the Clerks' Agreement, was called to fill the position. Claimant, an employee under the Clerks' Agreement, contends she was wrongfully deprived of the work and makes claim therefor.

There were no extra or furloughed employees available to perform the work. We have many times held that carriers not properly use employees or others not covered by the applicable agreement to perform the work of employees within the agreement to the detriment of the latter. Awards 2071, 2387, 2686 and 3193. Claimant is clearly entitled to an affirmative award for the time lost at the rate the absent employee would have received had she performed the work. Award 3193.

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 Agreement was violated as alleged.

AWARD

Claim (1) sustained. Claim (2) sustained to the extent shown by the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.