

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

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 and continues to violate the Clerks' Agreement:

1. When it failed and refused to adopt and apply the Scope Rule, Definition, Promotion, Assignment, Displacement, Seniority and other rules of the current July 1, 1943 Clerks' Agreement to certain positions in the Valuation Department of the Engineering Department, including Engineer Accountants and Engineer Computer, the substance of the regular, ordinary and normal duties of the occupants of which positions is clerical work of the nature that is subject to the scope and operation of the Clerks' Agreement;

2. That the Carrier shall apply the provisions of the rules of the Clerks' Agreement to such positions as are here involved and convert the monthly rates of pay attaching to the positions to daily rates, as provided in Rule 27 (a) of the current Clerks' Agreement, upon the basis of 306 days per year, effective February 16, 1945.

EMPLOYEES' STATEMENT OF FACTS: On February 2, 1945, the Division Chairman wrote to the Chief Engineer, copy of Division Chairman's letter submitted for the record and designated as Exhibit "A", and requested that occupants of some nineteen or twenty positions in the Valuation Department with a payroll classification of "Engineer Accountant" and one classified as "Engineer Computer" be given a seniority date upon the Engineering Department consolidated roster and that the monthly rates be converted into daily rates of pay in accordance with the provisions of Rule 27, and that all future vacancies be bulletined to all employees on the seniority roster and filled in accordance with the promotion and assignment rules.

On February 16, 1945, copy attached and designated as Exhibit "B", the Chief Engineer, Mr. F. E. Bates, replied to the Division Chairman's letter of February 2, and disagreed with the Division Chairman's request and made certain observations in defense of his position.

On March 9, 1945, copy attached, designated as Exhibit "C", the General Chairman referred the whole involved dispute to the Chief Personnel Officer on appeal from the decision of the Chief Engineer.

erty from the effective date of the so-called national agreement entered into between the organization and the United States Railroad Administration, effective July 1, 1920. The positions here in question have never been treated nor regarded by either party as being subject to the provisions of either the national agreement nor any of the separately negotiated agreements which have succeeded it. The subject of the coverage of these positions by the scope rule in the Clerks' agreement has never been discussed insofar as we are aware between the parties in the course of the negotiation of the various agreements that have been entered into between the Clerks' organization and this Carrier following the national agreement. The occupants of these positions, as such, have never been included on any Clerks' seniority roster. There was at one time a separate seniority roster for clerks within the Valuation Division. The occupants of these positions, as such, were not at that time included on that roster. There does not appear to have been any protest as a result of their omission therefrom. The Clerks' seniority roster in the Valuation Division was consolidated with the Clerks' seniority roster in the Engineering Department in 1938 and the occupants of the positions involved in this dispute were not included on the consolidated roster. There was no protest or question raised as to their omission. (It is really improper to refer to this as an "omission" because the names of the occupants of the positions here in question did not belong on a seniority roster solely by virtue of their service on one of the positions here involved.) The silence of the employees and the organization throughout this long period of years can lead to no other conclusion than that these positions are not now and have never been regarded by either party to the Clerks' Agreement as coming within the coverage of the scope of that agreement.

The claim should be dismissed for lack of jurisdiction, if not, denied.

OPINION OF BOARD: The General Committee claims that the regular, ordinary and normal duties of certain positions, which include those of Engineer Accountants and Engineer Computer, in the Valuation Division of the Carrier's Engineering Department are clerical in nature and subject to the scope and operation of their agreement; that the Carrier is violating their agreement by failing and refusing to apply its provisions thereto; and ask that the Carrier be required to apply the provisions of their agreement to those positions.

The parts of the parties' effective agreement, insofar as here applicable, are as follows:

"Scope—Rule 1. 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.

* * * *

"Note: Where existing payroll classification does not conform to this rule, employes performing service in the group specified herein shall be classified in accordance therewith."

"Definition of Clerical Workers—Rule 2. Employes who regularly devote four hours or more of their time per day to writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work, and to the operation of office mechanical equipment or devices, * * * used in the performance of clerical work, shall be designated as clerks and/or clerical workers as defined in Group 1 of Rule 1, unless otherwise mutually agreed by the signatories hereto."

The parties' effective agreement, by memorandum, lists all positions excepted from the scope thereof. The positions here involved are not among those excepted.

The question for our determination is whether or not the duties performed by any or all of the individual employees are those of a clerical nature such as are contemplated by Rules 1 and 2. If the record establishes that the assigned duties of any one or more of these positions are within those rules, then we must sustain the claim to that extent and delay in presenting the claim will not prevent its present enforcement.

In determining the question of whether or not any of the positions come within the scope of the parties' effective agreement it is not material what title the Carrier may have given thereto. It is the duties actually being performed that determines the classification.

The dispute involves eighteen positions and the record is voluminous. To take up the duties of each of the eighteen employees and discuss them separately, and in detail, for the purpose of arriving at their classification would unduly extend this opinion. We have carefully studied the record and arrived at the following conclusions. In stating these conclusions we will refer to the individual who occupied the position, as is done in the record, although it must be understood that the conclusion is based upon the duties which the record shows they perform.

As to the employees M. S. Dueker, R. V. Hazer, J. H. Rawlings, G. O. Peters, W. P. Davies, C. A. Fuelle, R. C. Hands and A. G. Weick, their job requirements and duties show that engineering education and/or field engineering experience is a requirement for obtaining and holding their positions as their work, or a part thereof, is that of a technical engineer. These positions, therefore, do not come within the scope of the parties' agreement and as to these positions the claim is denied.

As to the employees Erna Fick, Delores I. Barylski, John W. Laurent, A. B. Pfaff, G. O. Rust, A. D. Kelly, J. Alperin, S. Clay Baker, Frank C. Jasorka and George L. Mullinix it appears that accounting knowledge and/or experience, whereby they can compile data, maintain records, prepare reports, etc., is primarily required in order to obtain and hold their positions and the most important requirement thereof. That whatever engineering knowledge and/or experience is necessary, if any, is either secondary, and can be acquired by office experience, or not important. These positions do not require the services of a technical engineer. Therefore, they come within the scope of the parties' effective agreement and as to them the claim is sustained.

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 Carrier has violated the Agreement.

AWARD

Claim sustained as to the ten positions which are set forth in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.