

Award No. 3861

Docket No. CL-3862

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

James M. Douglas, 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 Wednesday, March 26, 1947, Friday, March 28, 1947 and Saturday, March 29, 1947 it relieved crew callers

M. D. Harkins, established seniority date January 18, 1943,

A. B. Tanner, established seniority date October 27, 1941,

E. T. Browder, established seniority date July 15, 1925,  
and on Tuesday, April 1, 1947, it relieved messenger

J. M. Buckley, established seniority date October 15, 1941,

at Alexandria, Louisiana, on their designated rest days, with an employe hired from the outside, namely, Allen Laborde, who holds no seniority rights established on the seniority roster, and failed and refused and continued to refuse to permit claimants who were available, ready, willing and able to work and who have established seniority rights on the Group 2 seniority roster—stations and yards—Little Rock—Louisiana Division, to perform the work on their designated rest days and be paid for same;

2. That the claimants shall be compensated for eight (8) hours at the time and one-half time rate on the dates stipulated in (1) hereof, and for each such "rest day" subsequent to the claim dates here involved until the dispute is disposed of and the claims satisfied.

**EMPLOYEES' STATEMENT OF FACTS:** The seniority roster of employes subject to the scope and operation of the Clerks' Agreement on the Little Rock—Louisiana Division—Station and Yards of the Division Superintendent of the Missouri Pacific Railroad, is divided into three groups, namely:

Group 1—Clerks, and those coming within the purview of (a) and (b) of Rule 1;

Group 2—Other office and station employes, such as those coming within the purview of Group 2, Rule 1, Page 3 of the Clerks'

The claim here presented in behalf of the claimants named, as recited in the Employees' Statement of Claim, is not supported by rules of the existing working agreement between the Carrier and the Clerks' organization, and for reasons stated in this submission, Carrier believes same should be denied by your Honorable Board.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On the dates in question Carrier used an employee of another class of service having no seniority rights established on the seniority roster under the Clerks' Agreement to fill Claimants' positions on their relief days. Claimants contend they were thus wrongfully deprived of the work and this claim resulted.

The facts and issues are similar, the same rules apply, the same principle controls, and we reach the same conclusion as we did in the companion case, Award No. 3860.

The claim will be 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 violated the agreement.

#### AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1948.

#### DISSENT TO AWARDS 3860, 3861 AND 3862

Here is error: An Agreement applied to give it the meaning that an employer cannot hire a new employee unless and until, contrary to the intent of the rule providing for an employee's day of rest and to any provisions of the Agreement, the Carrier takes either of the following actions:

(a) Commands a present employee to work on his rest day, i. e., additional to the six days of eight hours only guaranteed by the Agreement,

or

(b) In each and every situation which requires additional man-hours of service each employee who considers himself eligible to perform such work, in addition to his guaranteed six days of eight hours, must be consulted either individually or through the Brotherhood, and his or their privileged acceptance or declination of the additional work secured, before the employer could proceed to hire a new employee.

The error of such application of the Agreement and of this Award is evident in the following facts:

(1) The Agreement does not contain prohibition upon the Carrier in respect to its action in this case.

(2) The parties, with practical knowledge of railroad operations, could not in reason enter into a contract with intent giving either of the results above stated.

(3) This Carrier, one party to the contract, in its knowledge of the utter impossibility of retaining any semblance of possession of control of its property and its operation under such an application, would not become party to an Agreement with such intent or meaning.

/s/ C. C. Cook.