

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John M. Carmody, Referee**

---

**PARTIES TO DISPUTE:**

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

**MISSOURI PACIFIC RAILROAD COMPANY**

**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. (a) When, effective April 21, 1948, it arbitrarily and without conference, negotiation or agreement of the parties, removed the clerical work consisting of handling of bills of lading on "out-bound" less carload freight, rating and routing of such freight shipments and making of waybills therefrom; and
- (b) Revising and making of expense bills from the waybills on "inbound" or "received" shipments of less carload freight at the Pratt & Whitney plant at Dodson, Missouri, from the Group 1 Station and Yards Clerks' Seniority roster and district of the Central Kansas-Colorado Division to the Group 1, Station and Yards Clerks Seniority roster and district of the Kansas City Terminal Division, an entirely separate and distinct seniority roster and district from that of the Central Kansas - Colorado Division of the Missouri Pacific Railroad;
2. That Cashier O. W. Whitmarsh, Dodson, Missouri, seniority date June 27, 1926, and General Clerk Frank C. Hunter, Dodson, Missouri, seniority date May 12, 1943, and any other claimants involved in and affected by this Carrier action in violation of the Agreement, be compensated at the punitive overtime hourly rate, in accordance with claim statements made a part hereof, to the extent of time consumed every day by Clerks at Kansas City, Missouri, to perform the work, effective September 14, 1948, the date on which the Division Chairman, duly accredited representative of the Employees, filed protest in writing with the Division Superintendent, of the violation of Agreement, requested correction of it, serving notice that unless the violation was removed, penalty claims would be filed effective with the date of his protest, such claims to continue until the Agreement is complied with and the claims satisfied.

by a uniform bill of lading, and then having a freight waybill made at Kansas City, and in furnishing the shipper with an alternative form of bill of lading which would eliminate the necessity for a waybill to be made.

It is the view of the Carrier that to agree with the Employees that they are correct in their claim that there was a crossing of seniority lines when they knew an improved service was made effective on less carload freight in and out of the Pratt & Whitney Plant would so restrict the operations of the Carrier that it would not be able to give to the public the service it is obligated to give to the public. It would be hampered in its efforts to increase its business. Improvements in service by reason of change in method of making and maintaining records would be frozen, and the consequent loss of business and failure to secure new and additional customers would not only be harmful to the Railroad and the public but would also be harmful to the employees. It has been shown in this submission that the employees of the Railroad represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees have actually benefited. The claimants were not injured and there is no merit to their claim.

The claim should be denied in its entirety as it is not supported by either rule or past practice.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Agreement in evidence is effective July 1, 1943. The essential facts are not in dispute. They are simple in spite of the size of the record. In order to expedite the handling of certain less carload (LCL) freight the Carrier, on April 21, 1948, introduced an over-the-highway trucking service between its Kansas City freight terminal and Dodson, Missouri, where a war surplus plant, converted for multiple occupancy, had generated a new volume of LCL shipments, inbound and outbound. The two points, Dodson and Kansas City terminal, are in separate seniority districts.

In the process certain clerical work previously performed at Dodson was transferred from the clerks who had been doing it there to other clerks covered by the same Agreement in the Kansas City terminal. It is said in behalf of the Carrier, "All of the clerical work necessary, with the exception of the preparation of the waybills on the outbound movements and the preparation of the combination freight bill and receipt on the inbound movements, is performed by employees covered by the Agreement at Dodson."

Carrier argues this is not crossing seniority lines "as generally understood." This term is not further explained in the record. Whatever else may be said about the transaction, without quibbling over words, the record leaves no doubt that seniority lines actually were crossed; some of the clerical work that was done at Dodson was transferred to Kansas City terminal.

In Award No. 1645, involving the same parties who are here, we said: "It would hardly seem debatable that when the Carrier removed the crew board from the superintendent's office to the yard office it breached the agreement \* \* \* it removed the work from one seniority district to another. \* \* \* That is squarely on the issue here. The claim under Award 1645 was denied because, 'Having stood by for nine years, with full knowledge of the facts, without protesting the arrangement the Organization should not now be allowed to assert a claim for violation \* \* \*'. This is not the situation here; the Carrier does not assert undue delay in making claim here."

In Award 2585 we said, "\* \* \* employees on the respective roster have the prior right to claim and perform work falling within the scope or purpose for which the roster is set up."

The Carrier claims such transferred work amounted to only one and one-half hours per day. The Organization claims it amounts to a total of nine hours per day for two claimant clerks. The actual amount of time

is less important, the Organization argues, than the fact that any part of it was transferred out of one seniority district into another, citing a long list of awards, among them Awards Nos. 99, 198, 199, 1403, 1611, 1612, 1808, 2050, 3211, 4076, 4534, in support of seniority integrity. In Award No. 1611, where the time involved, only thirty-seven minutes, seems inconsequential, we held that "the dispute presents a challenge to the integrity of seniority rights . . . To condone a seemingly slight violation would tend to undermine the basic structure of seniority rights."

As a result of the introduction of this faster service, some of the business previously lost appears to have been recovered and new business was developed. On an overall basis the total amount of clerical work at Dodson increased in spite of the transfer from Dodson to Kansas City terminal of some of the clerical work. It is said for the Carrier, "This new method has the effect of eliminating from twenty-four to forty-eight hours' delay and reducing the possibility of damage by cutting out one handling in each direction." Tonnage increase was substantial; additional clerks were employed at Dodson.

On what rational grounds can complaint against the Carrier be entertained by this Division in the face of this achievement? Isn't it the function and the responsibility of the Carrier to devise whatever legitimate methods it can either to meet the challenge of competition or otherwise satisfy public transportation needs? We think it is. This Board is not disposed to hamper improvements in service looking to an increase in volume of business for Carriers and their employees; we think only the most efficient methods of operation, well illustrated here, will meet the challenge of other modes of transportation.

We do not have authority, however, to change agreements nor, by interpretation, to make them mean something other than the parties intended. The seniority districts and rosters here involved were created under the Agreement. The Carrier, contending that there is nothing in the Agreement that requires it to "negotiate for improvement in service", would have us believe "Improvements in service by reason of change in method of making and maintaining records would be frozen and the consequent loss of business and failure to secure new and additional customers would not only be harmful to the railroad and the public but would also be harmful to the employees" if it is not permitted to do what it did here without negotiation. Such a result would be deplorable. If we are to be guided by the record before us, however, that thesis is speculative; no negotiations have been undertaken. We have no means of knowing what the outcome of such negotiations may be. We said in Award No. 1808, "it is well settled that a carrier in discontinuing a position, not only may not assign the work to those outside the scope of the agreement, but is not permitted to assign it even to those covered by the agreement if they hold seniority rights exclusively in another seniority district." In Award No. 4076 we said, "Such work cannot be assigned to an employee in another seniority district except by negotiation and agreement."

Awards Nos. 4100 and 4232 have been cited on behalf of the Carrier. We believe that to the extent that either can be found to have application to the instant case they tend, when applied to the facts, to support the position of the Organization. The Carrier does not contend here, as was contended in Award No. 4100, that the work in question is not "work within the comprehension of the Agreement." If it be urged that the change in method here constitutes an emergency as in Award No. 4232, we are reminded that we said there, "At best it would have to be said that the average situation created by such an emergency (war) as here would, of necessity, be the subject of further collective negotiations."

It is precisely "further collective negotiations" that we think the instant case requires, looking toward the preservation of the gains derived from the enterprise shown in developing new methods while at the same time respecting the integrity of seniority rights.

We conclude the Agreement was violated when work was removed from one seniority district to another seniority district without conference or negotiation.

With respect to the penalty claim, we are disposed to allow it at pro rata for such hours as the records show that the clerks at Kansas City have devoted or might reasonably be expected to have devoted, to the work that was transferred. The claim is in favor of Whitmarsh and Hunter and "any other claimants involved in or affected by this Carrier action." A reading of the awards cited in behalf of the Organization in support of claims for "others" and awards cited in behalf of the Carrier denying such claims indicates this Division has not been consistent in its view.

With the understanding that "others" here means clerks who may have substituted for or succeeded the two claimant clerks, we allow the claim for a total of what will not be more than the two claimant clerks would have gotten at pro rata if they had been the only claimants. There is no showing here that the volume of business would have increased or that additional clerical work would have developed if the more rapid method of handling LCL freight had not been installed.

**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.

#### AWARD

Claim 1 (a) and (b) sustained; Claim 2 sustained on a pro rata basis to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 9th day of December, 1949.