

**Award No. 5621**

**Docket No. CL-5601**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Francis J. Robertson, Referee**

**PARTIES TO DISPUTE:**

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

**GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

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

(a) Carrier violated the Clerks' Agreement at Fort Worth, Texas, when it required an employe excepted from the Clerks' Agreement to perform routine clerical work; and,

(b) That W. F. Shipp, Station Clerk, Position No. 9, rate \$10.92 per day, be paid one (1) hour per day at punitive rate from February 14, 1948, to January 31, 1949, on which latter date the violation was corrected; and,

(c) That Sally A. Hamilton, Steno-Clerk, Position No. 12, rate \$10.13 per day, be paid twenty (20) minutes per day at punitive rate from February 14, 1948, to January 31, 1949, on which latter date violation was corrected.

**STATEMENT OF FACTS:** For over twenty years prior to February 14, 1948, the date the instant claim arose, Station Clerk W. F. Shipp, Position No. 9, Superintendent's Office, Fort Worth, Texas, the entire work assignment of which position consists almost entirely of rendering various reports and statements, was assigned to the preparation of a tonnage report commonly referred to as the weekly tonnage statement. This weekly report was set up by districts listing each train operated, north and southbound separately, reflected the tonnage handled in and out of terminals, the tonnage rating of the engine in and out of terminals and the time on duty each day for the week. In addition, each district was totaled as to tonnage handled, and the percentage of tonnage handled to total engine rating and the average time on duty for the week was also shown. (See Employees Exhibit "A"). The Assistant General Manager at Galveston, Texas, the two Trainmasters, the Chief Dispatcher and the Superintendent at Fort Worth, were all furnished a copy of this report.

Effective February 14, 1948, a new daily tonnage report was inaugurated in the Superintendent's office at Fort Worth, Texas, the preparation of which was assigned to the Personal Stenographer to the Superintendent, Mr. Roy W. Welch, which position is wholly excepted under provisions of the Clerks' Agreement bearing effective date of October 1, 1942. This daily tonnage statement reflected the number of trains and total tonnage handled, both northbound and southbound, separately, average number of tons handled

(3) No rule of the Clerks' Agreement was violated and the claims presented are without merit and unwarranted;

(4) The Carrier's position is supported by Awards of the Third Division;

and accordingly requests that the claims of the Employees be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On February 14, 1948 the Carrier's Superintendent at Fort Worth required his Secretary, an excepted employee, to prepare a special daily comparative tonnage report, which was in addition to a weekly tonnage report prepared in the normal course of operations by employees covered by the Agreement. Before a mimeographed form for said report was devised in 1948, the Secretary copied information covering the tonnage handled on a given day in 1948 from a daily tonnage statement compiled by the night stenographer-clerk, gathered the information covering the corresponding day in 1947 from train sheets for the corresponding day in that year and typed that information in comparative tabular form by districts and presented it to the Superintendent. After the mimeographed form was devised the night clerk filled in the figures for 1948 on the form and the Secretary obtained the 1947 figures in the same way and filled those in. Estimates as to the amount of time consumed by the Secretary in the performance of this work vary from 55 minutes by the Employees to 8 minutes by the Carrier. The time computed by the Carrier is based on an actual check by two employees whereas those compiled by the Employees are based on estimates of time consumed by employees who assertedly observed the Superintendent's Secretary in the performance of the work. There are inconsistent statements submitted by the Employees concerning the amount of time spent which reflects upon the reliability of their figures. The Carrier's figures seem to be more accurate. Allowing for the contingency that on days other than the one selected by the Carrier for the purpose of making the check and from an examination of the exhibits, 15 minutes would appear to be a fair estimate of the amount of time expended in the work. Initially a copy of this report was passed on by the Superintendent to the Trainmaster, Assistant General Manager and Chief Dispatcher. On March 31, 1948 the Superintendent discontinued endorsing a copy of the report to the Assistant General Manager.

The sole issue in this dispute is whether or not the work performed by the Secretary to the Superintendent was incident to or as a consequence of his position within the meaning of the following Memorandum of Interpretation of Application of Articles I and II:

"In the application of Articles I and II of Agreement to become effective October 1, 1942, it is understood and agreed that the work of Class 1, 2 and 3 employees, referred to in said Agreement, when performed by officials and others not covered by the Agreement, incident to or as a consequence of their official or other positions, is not subject to the provisions of said Agreement."

From the analysis of the facts appearing in the first paragraph of this Opinion, we think it clear that the comparative daily tonnage report was of a special nature not required in the ordinary conduct of the business of the Carrier. It was merely a device employed by the General Superintendent to secure in abbreviated form certain statistics already compiled by employees covered by the Agreement without waiting for the formal weekly report. It would only be natural and logical for him to call upon his Secretary to perform that duty for him in view of the small amount of time required to perform it. It is an irresistible conclusion that such work was incidental to or consequential of the performance of the duties of the secretarial position. For Awards of somewhat similar import, see Awards Nos. 1418 and 4643.

**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 Carrier did not violate the Agreement.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1952.