

Award No. 5624

Docket No. CL-5631

**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**

**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. When on Saturday, December 2, and Sunday, December 3, 1950, it utilized Mrs. Eula Gallagher (Mrs. D. E. Gallagher) and Mrs. Katherine M. Gilkerson (Mrs. Jack Gilkerson) to perform the work of typing payrolls and compensated them at the rate of time and one-half, which individuals were not bona fide employees and held no seniority rights on the Southern District General Superintendent's Clerks Group 1 seniority district and roster and failed and refused to permit Miss Mary Lyle, listed on the seniority roster with a date of February 8, 1926, regularly assigned occupant of position of Assistant Material Clerk, rate \$13.20 per day, and an experienced stenographer and typist for many years to perform the work on her rest days on Saturday, December 2 and Sunday, December 3, following verbal and written request made by Miss Lyle on December 1, 1950 to the General Superintendent to be called to perform the work here involved in the order of her seniority rights;

2. Clerk Miss Mary Lyle be compensated for eight hours at the rate of time and one-half time, \$2.28375 per hour, \$18.27 on each of the claim dates, amount \$36.54, which she would have earned and been paid under Agreement provisions had she not been denied the right to perform the work in violation of the Clerks' Agreement, seniority, overtime and related rules, such as Memorandum of Agreement dated November 17, 1948 "Method of Filling Temporary Vacancies as Referred to Herein"—Rule 3(e) defining a "bona fide employee", Rule 6(a), Rule 25(b)—Stipulation "4" of Interpretation—Memorandum of Agreement dated November 20, 1948.

**EMPLOYEES' STATEMENT OF FACTS:**

The General Superintendent's District Accounting Office for the Southern District of the Missouri Pacific Railroad is located at Little Rock, Arkansas, and is a part of the Southern District Clerks' Group 1 and Group 2 seniority district and roster, which District includes all operating divisions and terminals, namely:

1. St. Louis Terminal Division (Superintendent's and Mechanical Department clerical forces) east and west of the Mississippi River;

We do not believe any rule in the Clerks' Agreement supports this claim.

(EXHIBITS NOT REPRODUCED)

**OPINION OF BOARD:** Despite much extraneous matter in the record, the parties ultimately have agreed that the sole issue to be determined herein is whether or not the Claimant was qualified to perform the payroll work to which she had requested assignment on the Saturdays and Sundays involved in the claim.

The principles guiding this Board in the adjudication of claims involving fitness and ability under rules similar to that involved in the instant Agreement are well known. It lies within the Carrier's discretion to determine the qualifications of employees for assignments or promotions. In the absence of a partial, arbitrary or capricious exercise of that judgment, this Board will not interfere with the Carrier's decision. If the Carrier's determination is challenged before this Board, the burden of establishing the Claimant's qualifications rests with the Employees. Under the rule in the instant Agreement it is provided that promotions, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

The Claimant is an employee of many years of experience in railroad employment. At the time this additional payroll work was required, she was regularly assigned as an Assistant Material Clerk. Before her assignment to the latter position, she had many years of experience as stenographer and stenographer-clerk. On the Assistant Material Clerk position she spends many hours in typing. She had previous experience in the blocking and typing of payrolls. The Carrier has indicated that the reason for her disqualification is that she was not a first-class stenographer and that she was not competent to turn out the number of payrolls that the average stenographer would. In support of this statement, Carrier cited figures showing numbers of payrolls turned out when she was temporarily employed in blocking and typing payrolls.

The need for stenographic skill in the performance of this work is not shown. Conceding that Claimant's skill as a stenographer may have deteriorated because of lack of practice while on the Assistant Material Clerk's position, her skill as a typist was kept up. With respect to her performance when temporarily engaged in the typing and blocking of payrolls, the Employees showed that she was not then exclusively engaged in that work but performed other work at the same time. Carrier conceded that this was so and indicated their statement in the first instance was erroneous due to lack of knowledge of that factor. The figures cited by Carrier, accordingly, cannot be used as a fair basis of comparison of Claimant's skill with those exclusively assigned to the payroll work.

The foregoing analysis clearly warrants a finding that the Employees have established the sufficiency of Claimant's fitness and ability and that the Carrier has been arbitrary or capricious in refusing to assign Claimant to the work.

The claim will be sustained at the pro rata rate.

**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 violated the Agreement.

A W A R D

Claim sustained at pro rata rate.

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.