

Award No. 5657
Docket No. CL-5600

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—WESTERN LINES**

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

(a) Carrier violated the rules of the Clerks' Agreement at Amarillo, Texas, when it assigned or permitted the Night Chief Dispatcher (now titled Assistant Chief Dispatcher) and/or Dispatchers to perform work regularly assigned to and performed by Clerks; and,

(b) Mr. W. L. Sloan shall be compensated for eight (8) hours each day, September 14 to 21, 1947, both dates inclusive, at the punitive rate of his position.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. B. Phillips, the occupant of "87" Clerk Position No. 68, Dispatcher's Office, Amarillo, Texas, was on vacation with pay from September 15 to 20, 1947, inclusive. While he was on vacation the Carrier assigned or permitted the Night Chief Dispatcher and Trick Dispatchers to perform the duties of this position commencing on Sunday, September 14, through Sunday, September 21, 1947, thus removing this work from the scope and operation of the Clerks' Agreement.

POSITION OF EMPLOYEES: It is the position of the Employees that the particular work performed by the Night Chief Dispatcher and Trick Dispatchers, in this case, was routine clerical work and work that constituted the entire work assignment of the position held by Mr. W. B. Phillips and regularly performed by an employe covered by the provisions of the Clerks' Agreement, and that the following rules of the agreement, bearing effective date of October 1, 1942, are in violation:

Article I, Section 1

Article II, Section 1

Article III, Section 1-a, 2, 3 and 4

Article XIII, Section 15

September 22, 1947. The foregoing statement would be equally true regardless of whether the Brotherhood had or had not accepted the Carrier's offer of settlement.

While the instant dispute actually involves the performance of but 3'45" work by other than clerical employes and the claimant would ordinarily only be entitled to that amount of time at the pro rata rate under the principles so often enunciated in the many Awards of the Board, the Carrier is still willing to dispose of the instant claim on the basis of its "without prejudice" offer of settlement. The payment proffered by the Carrier in its offer of settlement was acceptable to the Employes, hence the instant dispute has been progressed to the Third Division by the Brotherhood for the sole purpose of attempting to use the Carrier's offer of settlement as a basis for support for their claim in the second dispute previously mentioned, and which is also now before the Third Division. The Carrier respectfully asserts that, regardless of what the Board's decision may be with regard to the penalty portion of the Employes' claim, the Carrier's "without prejudice" offer of settlement of the instant dispute should not serve to prejudice its position in this or any other dispute, and particularly the second dispute now on appeal with the Third Division as Docket No....., involving the abolishment of the "87" Clerk Position No. 68.

The Carrier is uninformed as to the arguments the Brotherhood will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in reply to the Brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the Brotherhood in this dispute.

All that is herein contained has been both known and available to the Employes or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents the question whether a position covered by the Clerks' Agreement was properly relieved during the incumbent's vacation by employes not covered by the Clerks' Agreement.

This claim grows out of the facts summarized in Award 5658.

The parties attempted to settle this claim and offers of compromise were exchanged but no agreement was reached. These compromise offers appear in the record but on well settled principles we disregard the disclosure (Awards 1395, 2283, 2863, 3345 and 5212).

No particular defense is put forward to this claim beyond the number of hours each day for which the claim should be sustained and the rate.

The "87" Clerk position was still in existence during the vacation of the incumbent and accordingly vacation relief should have been provided by an employe covered by the Clerks' Agreement.

The position was an 8-hour day position and the claim should be sustained on that basis at the pro rata rate (Award 3271).

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 Employes involved in this dispute are respectively Carrier and Employes 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 as above found.

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AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois this 21st day of February, 1952.