

Award No. 6101
Docket No. CL-5978

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

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

(a) Carrier violated and continues to violate the rules of the Clerks' Agreement when it assigned and permitted various Mechanical Department Foremen and Supervisors at South Tacoma Shops, South Tacoma, Washington, to perform routine clerical duties; and

(b) The following clerical employees at South Tacoma, Washington, be compensated at the rate of time and one-half from November 12, 1948, and each and every day thereafter, until such time as their regular assigned work is restored to them:

H. W. Lagerquist, Clerk to General Car Foreman, for thirty minutes each day at time and one-half rate;

A. M. MacDonald, Clerk to the Blacksmith Foreman, for forty-five minutes each day at time and one-half rate;

W. B. Richardson, Clerk to General Locomotive Foreman, for forty-five minutes each day at time and one-half rate;

Mrs. H. E. Cory, Steno-Clerk in General Car Foreman's Office, for fifteen minutes each day at time and one-half rate;

B. C. Glanville, Clerk to Boiler Foreman, for forty-five minutes each day at time and one-half rate;

Mrs. M. N. Fifer, Stenographer to the Shop Superintendent, for forty-five minutes each day at time and one-half rate; and

Any other Clerks who may have filled these positions since November 12, 1948.

EMPLOYEES' STATEMENT OF FACTS: Mechanical Department Shop employees at South Tacoma Shops of the Northern Pacific Railway Company are required to register in and out on time cards by the use of time-recording

Rule 1 provides that the rules contained in the Clerks' Agreement govern the hours of service and working conditions of employees specified therein. This rule does not specify the work customarily or traditionally performed by clerical employees. Therefore Rule 1 by its specific terms cannot be considered as a classification of work rule preserving certain specified work to particular positions covered by that agreement. This conclusion is fully supported by the following provision contained in Rule 1(a):

"The foregoing grouping of employees is for the purpose only of showing the classes of clerical, office, station and storehouse employees who are covered by this agreement."

Rule 2 defines clerical employees as distinguished from non-clerical employees included within the scope of the Clerks' Agreement.

Rule 3 establishes the basis for acquiring seniority.

Rule 5 provides for the posting and maintenance of seniority rosters.

Rule 31 is the overtime rule and provides for payment at time and one-half rate for time worked in excess of eight hours on any day, subject to certain exceptions.

It is plainly evident that Rules 1, 2, 3, 5 and 31 lend no support to the Employees' contention that supervising the registering in and out of Shop Craft employees on time registration clocks at South Tacoma Shops is work belonging exclusively to clerical employees. Furthermore, additional rules contained in the current Clerks' Agreement may be searched in vain for anything that would sustain a contention that clerical employees must be stationed adjacent to time clocks for the purpose of supervising Shop Craft employees registering in and out.

The Carrier has shown that Mechanical Department Foremen in affording either direct or indirect supervision of Shop Craft employees registering on time clocks are performing an integral part of the duties and responsibilities of their positions. The Carrier has also shown that Mechanical Department Foremen when supervising Shop Craft employees registering on time clocks are not performing work that either by custom and practice or agreement is the exclusive work of clerical employees.

This claim should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Carrier, and is made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The claimants are regularly assigned Clerks at the Carrier's Shops at South Tacoma, Washington. In addition to their regular duties, they were assigned to watch the time clocks to see that each mechanical department employee checked in and out, and that he checked only for himself. They were paid for this work at the rate of time and one-half when performed outside of their regularly assigned hours.

Claim is made for compensation at the rate of time and one-half from November 12, 1948, until the work is restored.

In 1948, new electric time clocks were installed and placed near the mechanical department's foremen's offices where they could be watched by the foremen. Part of the claimant's work was discontinued November 12, 1948, and all of the work was discontinued February 17, 1949.

It is contended that the work as discontinued, and as now supervised by the foremen, was work covered by the Scope Rule of the Clerks' Agreement, and therefore violates Rule 1, the Scope Rule, and Rule 3, Seniority Datum.

The Carrier contends that the time clock watching is supervisory work, and not clerical, and is an integral part of the supervisory function of the mechanical department foremen.

Prior to the installation of the new electric time clocks, the old tape-recording time clocks were placed at the entrances to the shops. A Clerk was assigned to stand by the clock and watch the checking in and out of mechanical department employees. The work of watching the time clocks at the South Tacoma Shops had been assigned to clerical employees for over thirty years prior to the discontinuance of this work. During this period of time, the Clerks' Agreement has been revised at least three times, and the Clerks continued to perform the work. The Clerks were working under the Clerks' Agreement; they were paid for watching the time clocks under the Clerks' Agreement.

Even though the work is not spelled out in the Scope Rule, it has been assigned to employees whose positions are described in the Scope Rule. It has been the practice and custom to assign Clerks at the South Tacoma Shops to do the clock watching. Past practice, custom, and tradition at the South Tacoma Shops have made the clock-watching work, work of the Clerks coming within the Clerks' Agreement. See Award 5404.

The case at hand can be distinguished from Award 5068 in that the case at bar shows a past practice and custom over a great number of years which was not involved in Award 5068.

Award 5068 further specifically provided that the work "should not be subject to the provisions of the Agreement." We readily realize that where work is assigned to both the mechanical department foremen and to the Clerks, and in the interest of economy, when the work done by the Clerks is abolished, and this work is more supervisory in character than clerical, it is regarded as performed by foremen as a part of their positions. However, in the case at hand, past practice, custom, and tradition have made this work at the South Tacoma Shops work of the Clerks.

The claim should be allowed at the pro rata rate for the time that the work was not performed by Clerks. At such time as the work was performed by Clerks, during the period in dispute, the claim is denied.

The last paragraph of Claim (b) reads:

"Any other Clerks who may have filled these positions since November 12, 1948."

This claim is inordinate, and the claim will be allowed for only the named claimants.

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 sustained for the named claimants in accordance with this Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.

DISSENT TO AWARD 6101, DOCKET CL-5978

The Award here is in error and utterly disables itself by arriving at a conclusion which is repugnant to its Opinion. The Opinion holds (1) that the work of watching time clocks is not spelled out in the scope rule of the Agreement in evidence and (2) that this very work is not a part of the regular duties of the Claimants. Then the Award proceeds to arrogate to the Clerks' craft by the expedient of "practice" the same work which it held not to be spelled out in the scope rule and not to be a part of the Claimants' duties. Thus work which is not their work is their work.

The Opinion further concedes that part of Claimant's work was discontinued November 12, 1948, and all of the work was discontinued February 17, 1949. Thus, considering that it is a Carrier's prerogative to discontinue work, the Opinion is highly ambiguous in sustaining any part of the claim subsequent to the latter date.

The Award conflicts with what was done in Award 5404 which is cited in the Opinion in support of the sole premise upon which the Award herein is based. The author of Award 5404 denied the claims of the Clerks therein and thereby refused to take work away from other employees who were not given due notice of the hearing before this Board. In a situation where other employees not given such notice might be affected by an adverse decision of this Board, such as results from the decision in the instant case, the author of Award 5404 is on record in Awards 5432 and 5433 as concluding that the proper procedure is to dismiss the claim without prejudice. The Courts of the Land support his conclusion in that respect, including the Supreme Court of the United States.

The author of Award 5404 also participated as Referee in the case covered by our Award 5068 in which the same issue was involved as that involved in the instant case.

In our Award 5068 it was held to be "crystal clear that clock watching work is far more supervisory in character than clerical. Hence, since foremen are supervisors, we are of the opinion that such work is normally, reasonably and logically incidental to the position of a foreman and that when it is performed by him it is to be regarded as performed in consequence of his position. It follows the Carrier's action in assigning the work here involved to foremen and in permitting them to perform it was not in violation of any of the terms of the current agreement." (Our emphasis).

In our Award 5068 (*supra*) evidence was adduced by the petitioning Organization on the point that, for many years (as far back as 1915), the watching of all time recording clock registrations in the mechanical department at the point involved therein was assigned to and performed by clerical employees. That evidence was rejected in Award 5068.

Now we have a case in which the evidence properly rejected in 5068 is accepted as controlling. Such evidence cannot successfully rebut the proposition that the work is supervisory, not clerical; the proposition that when it is performed by the foreman it is a part of his position. Therefore, this Award usurps the right of Management to do as a part of its supervisory office that which not only has here been declared to be its right but which right it has not contracted away.

The Award is grossly wrong and we dissent.

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp

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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 6101

Docket No. CL-5978

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Northern Pacific Railway Company.

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In regard to the interpretation requested, it is hereby interpreted that the claim was allowed for only the claimants specifically named in the claim filed with the Board, and it did not, and was not, intended to cover unnamed persons. This is specifically set out in the last paragraph of the opinion and in the award.

Referee Paul G. Jasper who sat with the Division, as a member, when Award No. 6101 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1955.