

Award No. 6160

Docket No. CL-5960

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**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on March 23, 1951, General Car Inspector Mr. M. T. McClatchy performed the clerical work at Rankin Tract, General Passenger Car Foreman's office consisting of:

- (a) pulling out billing repair cards which were not properly filed and filing them in proper place;
- (b) pulling billing repair cards out of cabinet for Mr. H. S. Marsh, Superintendent Car Department's office, which cards had not been mailed in to that office, and taking those billing repair cards to Mr. Marsh's office,

which work Mr. McClatchy consumed six hours in performing.

2. When on March 24, 1951, General Car Inspector Mr. M. T. McClatchy and Mr. E. H. Hinrichs, Assistant Superintendent, Passenger Car Department, went into the General Passenger Car Foreman's office at Rankin Tract and both officers of the Railroad devoted six hours to the performance of the same type of clerical work as described in "1" hereof, which clerical work has for many years and did on the claim dates here stipulated, constitute an integral part of the ordinary, normal and regularly assigned duties of Clerks subject to the scope and operation of the Clerks' Agreement;

3. That the Carrier be required by proper directive or order of the National Railroad Adjustment Board to pay General Car Foreman's Clerk, George W. Hawthorne, six hours at punitive rate, \$2.4975, for March 23, 1951, and twelve hours at punitive rate, \$2.4975, for March 24, 1951, which is the equivalent in amount of time Mr. McClatchy devoted to the performance of the clerical work on March

(e) In the application of this rule, it is understood that full cooperation will be given by all concerned to employees in their efforts to qualify and in extenuating circumstances to be mutually agreed upon between the duly accredited representatives of the employees and the representatives of the management, the time limit of 30 days may be extended to a maximum period of 60 days."

In the first place, the Employees have submitted nothing in support of their allegation that the night clerk was not given proper instructions and the Carrier does not accept it as correct. Even with supporting information, conclusions as to its accuracy would still be a matter of opinion. From the description of the work given in Section 3 of our Statement of Facts it is readily seen that it was a very simple operation. The failures and errors represent, in our opinion, carelessness that would not be eliminated by any amount of instructions. Any such instruction beyond the first telling would be only repetitions of information that could have been understood in the first telling. It would not have cured carelessness.

In the second place, Rule 7 deals with "Failure to Qualify." The question of the occupants being able to qualify was not involved. They had been assigned to do the work involved and were paid the full price for it—they were not working on the trial basis. It is clear from the reading of Rule 7 that the word "cooperation" in Section (e) thereof does not mean "on the job training." The Carrier declares that it did give full cooperation under this rule in this case. The heavy turnover on the position as explained in Section 6 of our Statement of Facts was a detriment to obtaining first class work but this does not alter the fact that the Carrier was paying the first class rate for it.

It is the position of the Carrier that there would be no violation of the Clerks' Agreement in having its officers check the work of its employees even if such work has been performed by fully qualified workers. The best trained employees make mistakes and it is a well established practice on the Carrier to have work in all departments of the service checked by inspectors and supervisors. It has been the practice for officers of the Carrier to make periodical checks of the kind here involved of this very repair card cabinet. This particular check was a special one due to a recession of the flow of cards to Superintendent Car Department to an alarming extent. These officers, in making the check, did nothing that would have been necessary if the night clerks had correctly performed the work for which they were paid.

The Carrier holds that when it purchased, at full cash value, the product here involved—the work of one of its employees—that product belonged to the Carrier. When the work was found to be defective, the necessary repairs were in no wise subject to the Clerks' Agreement. There was no violation of that Agreement when the Carrier had its officers make the repairs after a double failure on the part of the contractor—the Clerks' Organization—to deliver the article for which the Carrier had made full payment.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant was General Foreman's Clerk at Rankin Tract, St. Louis, Missouri, with assigned working days Tuesday through Saturday and rest days of Sunday and Monday.

Due to improper handling of billing repair cards by night clerks, the claimant, a few days prior to March 3, 1951, was instructed to take over the duties of filing and handling billing repair cards. The claimant did not take over and perform these duties.

On March 23, 1951, the General Car Inspector spent six hours in the General Passenger Car Foreman's office at Rankin Tract pulling improperly filed billing repair cards and filing them properly.

On March 24, 1951, the General Car Inspector and Assistant Superintendent, Passenger Car Department, each spent six hours in the General Passenger Car Foreman's Office pulling improperly filed billing repair cards, and took the duplicate cards to the office of the Superintendent, Mr. H. S. Marsh.

This claim is for eighteen (18) hours' work at the punitive rate for violation of the Clerks' Agreement.

The Carrier contends that the work in question is not a part of the Clerks' Agreement, and was work which supervisory employees could perform.

The Carrier's supervisory employees in the instant case were not supervising the work or doing clerical work incident to their position, nor were the supervisory employees checking the work of the Clerks. They were actually correcting and doing the work of the Clerks. The fact that work has been improperly performed does not take it out of the Agreement. The Carrier has its remedy against those employees who improperly perform work.

The Inspector and Assistant Superintendent spent eighteen (18) hours doing Clerks' work. They were not authorized under the Clerks' Agreement to perform Clerks' work. If the work was to be corrected, it should have been done by a Clerk.

The claim is for the punitive rate. The Agreement contemplates work performed. The work was not performed by the claimant, and therefore he is entitled to be paid 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 the Agreement was violated.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of March, 1953.