

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, 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 it removed the clerical work consisting of checking of the yard and compiling of the yard check report at Monticello, Arkansas, which work had theretofore been performed by Clerks, out from under the scope and operation of the Clerks' Agreement and utilized an Agent-Telegrapher, an employe covered by the wage agreement of another craft and class of employes to perform the work on the claim dates as shown in our Statement of Facts;
2. That Claimant Clerk J. E. Trimm shall be compensated for a "call" for the 6 days in January, 3 days in February, as specified in Statement of Facts, 9 additional days in February, 21 days in March and 17 days in April, or a total of 56 days at \$5.36 per day, amount \$300.16, account Carrier's action in violation of Scope Rule 1, Rule 2, the seniority and overtime provisions of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: When the Wage Agreement of the parties was made effective November 1, 1928 (Mediation Case C-337) the record shows that the clerical force at Monticello, Arkansas, subject to the scope and operation of the Clerks' Agreement was—

Clerk	Rate \$5.24 per day
Clerk	Rate 4.64 per day
Porter	Rate 1.60 per day
Station Helper	Rate 2.00 per day.

On a date subsequent to November 1, 1928 which is not presently available to the Employees the position of Clerk, rate \$4.64 per day and the position of Station Helper, rate \$2.00 per day were abolished, at which time the Porter position was reclassified to a new title of Porter-Trucker.

work of an agent and in 3989 the claim was denied on the premise that checking yards was incidental to the work of a switch foreman. To this Carrier that is just not logical reasoning. It may well be that use of the term "yards" caused some confusion. Here in this case we speak of checking yards at a station, but the checking of the cars on the yard tracks at Monticello was purely station work—it was not yard work such as comes under the supervision of a yardmaster and was not at all associated with the work of a switch foreman. We are at a loss to understand how it could have been concluded that the checking of cars on tracks at an industry as was involved in Award 3988 **in connection with imposition of demurrage**, as definitely stated in the award, was work incidental to the work of a switch foreman and not to that of the agent when the switch foreman has nothing whatever to do with imposition of demurrage and the agent has all there is to do with it.

At Monticello there is no switch foreman—there is no yard in charge of a yardmaster. All of the facilities, including the yard tracks, are station facilities—they are all under the supervision of the agent-telegrapher. All of the station work performed is incidental to the work of the agent-telegrapher—he is in charge of all of it including check of yard tracks, making 6793 report and imposition of demurrage.

Another difference between Awards 3988 and 3989 is that in the case covered by 3988 the agent checked the tracks in overtime hours and it was held that such being the case the work was not incidental to his regular duties. It is this Carrier's position that if work is incidental to the duties of an agent it is incidental in overtime hours just as much as it is in regular hours. However, the agent-telegrapher at Monticello did not check the yards and make 6793 report in overtime hours.

In the light of these facts, it is our position that Award 3988 is not applicable to the instant dispute because of the distinguishing differences we have outlined but that Award 3989 is support for our position because of the similarity of the conditions involved.

The Carrier holds that in the case before you in this dispute the work was definitely incidental to the work of the agent-telegrapher and at his post of duty—not at some unrelated point.

The Carrier further holds that employes under the Telegraphers' Agreement have traditionally and customarily checked yards and made 6793 reports on this property, clerks being assigned this work only as assistants to the agent-telegrapher when the volume of clerical work went beyond the capacity of the latter.

Therefore, no violation of the Clerks' Agreement occurred when an unnecessary position was abolished and position of Agent-Telegrapher retained with some additional clerical duties assigned thereto. The Employes have not shown any justification nor agreement authority for continuing the unnecessary clerk position which was abolished. (Exhibits not reproduced.)

OPINION OF BOARD: It is contended the Board should be required to notify a third party, in this case the Telegrapher Organization, of the pendency of the claim, as their rights may or may not be adversely affected by any Award we may make. In this matter the question was not raised by Carrier heretofore, and in fact was brought to the attention of the Board by a Board member of this Division on March 6, 1953. From a review of the record, the claim as made is for a definite period of time, covering specific dates in January, February, March and April 1952, and on April 24, 1952, the Carrier terminated the alleged violation of the Agreement, by establishing the clerical position. It is the opinion of the Board, that the jurisdictional

question as raised is moot, since the period of time as claimed is for definite and specific dates, nor could by any stretch of the imagination, the rights of the Telegraphers' Organization be adversely affected. For reasons stated Carrier Members' position is without merit.

Claim is made by the Organization on behalf of J. E. Trimm for a total claim for work in the amount of \$300.16, or about a period of 56 days' compensation at the daily rate of \$5.36 per day, brought about by action of the Carrier by removing clerical work from the Clerks and assigning it to an Agent-Telegrapher, outside the Clerks' Organization, but covered by another Agreement in a craft not included in Scope Rule 1, of the Agreement, and claims a violation by the Carrier of the Scope Rule 1, and Rule 2, Classifications, Rule 3, Seniority, and Rule 25, Overtime and Calls Rule, provisions of the Agreement.

Prior to January 23, 1952, and as far back as November 1, 1928, Carrier listed the two positions covering clerical forces at Monticello, Arkansas, subject to the Agreement with Clerks' Organization. During the period 1928 to 1943, one of the Clerk positions had been abolished, but in April 1943, the Clerks' position was reestablished, and again August 21, 1947, a Clerk's position was abolished, but again reestablished in September 1949, and two positions of Clerks remained on the roster until again on January 23, 1952. Carrier again abolished one Clerk's position, which left but one Clerk position remaining at Monticello, Arkansas, with hours 10:00 A.M. to 2:00 P.M.; 3:00 P.M. to 7:00 P.M.—Monday through Friday with rest days Saturday and Sunday. The incumbent in the remaining Clerks' position makes claim at the punitive rate, under the Call Rule for two hours for the dates as listed between January 24 and April 24, 1952, when the Carrier reestablished the second Clerk position, and returned the work to the Clerks' Organization. It is contended by the Organization that when the position was abolished, January 23, 1952, Carrier assigned a portion of the clerical work to the Agent-Telegrapher, a position not covered by the Clerks Agreement. The work assigned consisted of making report 6793, checking the yard and taking over by the Agent-Telegrapher, work formerly belonging to the Clerks, all in violation of the Agreement. The clerical work assigned the Agent-Telegrapher required him in checking the yard, to leave his instruments, and certainly the work required was not in close proximity to his regular post, and the duties required in performing his telegraphic duties. This Board has held in many cases, that while work of a clerical nature can be assigned to telegraphers to fill out their tour of duty, certainly it cannot take away work from the Clerks who have had it for many years, and assign it to another craft. We reaffirm the reasoning in Awards 3988 and 4559. In Award 5786 we stated:

"Insofar, as here material these qualifications or exceptions include the right of Telegraphers to perform it to the extent necessary to fill out their time, although they cannot be detached from their posts and be sent elsewhere to perform it nor can the work be brought to them. See Awards 636, 4288, 4477, 4559 and 4867 of this Division."

It is evidenced by the action of Carrier on April 24, 1952, in restoring the Clerk position, that the required work at Monticello could not be properly performed by the Agent-Telegrapher, and we find that Carrier violated the Agreement as alleged in the claim.

Since the work in checking the yard and performing clerical work by the Agent-Telegrapher did not involve over two hours on each of the days claimed, we are of the opinion the Carrier has violated the provisions of Rule 25—Overtime and Calls—and the employe is entitled to compensation at the punitive rate of pay for two hours on each of the days the clerical work was performed by the Agent-Telegrapher.

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 has violated the Agreement, as stated in the foregoing Opinion.

AWARD

Claim sustained on a basis of two hours' pay at punitive rate each day work was performed by employees not covered by the Scope Rule.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.

DISSENT TO AWARD 6293, DOCKET CL-6363

The majority have been stated that "Notice" to the third party is not required.

For the reasons outlined in our dissent to Award 5790, Docket CL-5763, such "Opinion" is clearly in error.

On its merits, the author of this Award again errs in stating:

"This Board has held in many cases, that while work of a clerical nature can be assigned to telegraphers to fill out their tour of duty, certainly it cannot take away work from the Clerks who have had it for many years, and assign it to another craft. We reaffirm the reasoning in Awards 3988 and 4559."

Award 3988 is no authority for such holding for we clearly say in that Award:

"The substance of this award was to hold that the terms of the Clerks' Agreement did not assure to clerks all clerical work; that telegraphers and other types of employees, as incidental to their work, were generally called upon to do some clerical work, and their doing so did not constitute a violation of the Agreement. Many other awards of this Division sustain this holding. See Awards Nos. 806, 1418, 1694, 1849, 2551, 2674, 3211. We think this principle has been firmly established by this Division."

Nor is Award 4559 any authority for such holding.

Award 4559 denied the claim and took clerical work away from clerks who had performed it for many years and assigned it to telegraphers.

Award 5786 (cited by the author) again did precisely the same thing and took clerical work from clerks who had performed it for many years (23) and awarded it to telegraphers.

An Agent-Telegrapher, as the title clearly shows, is not just a telegrapher with a post of duty at the key. His post of duty is the station and station grounds assigned to his jurisdiction.

The Award in its entirety is clearly erroneous and should be so regarded.

/s/ J. E. Kemp

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ R. M. Butler

/s/ E. T. Horsley