

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When, effective Friday, June 20, 1952, it nominally abolished the General Clerk position, rate \$14.22 at Forrest City, Arkansas, hours, 8:00 A. M. to 12 Noon; 1:00 P. M. to 5:00 P. M., Monday through Friday, and removed the work out from under the Agreement and utilized the Agent-Telegrapher, monthly rated and subject to the Agreement of another craft, to perform clerical work which was the substance of the normal and regular duties of the nominally abolished position, and failed and refused and continued to refuse to pay monetary claims made by the Cashier, R. E. Akers, for 4 hours each work day at the punitive rate until September 30, 1952, when the General Clerk position was restored and the violation of Agreement stopped;

2. Cashier R. E. Akers shall be compensated for the 4 hours he claimed at punitive rate for each work day the Agreement was violated, i. e.,

June 1952	6 work days, 4 hours each at punitive hourly rate of \$2.666 per hour \$10.66 per day amount	\$ 63.96
July 1952	22 work days, 4 hours each at punitive hourly rate of \$2.692 per hour, \$10.78 per day amount	\$237.16
August 1952	21 work days, 4 hours each at punitive hourly rate of \$2.696 per hour, \$10.78 per day amount	\$226.38
September 1952	20 work days, 4 hours each at punitive hourly rate of \$2.696 per hour, \$10.78 per day amount	\$215.68
	Amount	<hr/> \$743.10

account Carrier's action in violation of Scope Rule 1, Definition Rule 2, Seniority Rule 3, Rule 6 (a), Overtime Rule 25, Effective Date and Changes Rule 45 of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to Friday, June 20, 1952, the Carrier maintained two clerical positions subject to the scope and operation of the Clerks' Agreement at its Forrest City, Arkansas Local Freight station, located on the main line of its Memphis Division between Wynne, Arkansas and Marianna, Arkansas, which positions were classified, listed and rated as—

Cashier

General Clerk

and for a while following the Mediation Wage Agreement Clerks' case, Mediation Board Case 337, effective November 1, 1928, it had a third position of Clerk at Forrest City station, which the record indicates was a Porter job that was reclassified and rated to that of Clerk, but that position was eliminated on a date probably early in 1937. The exact date is not presently available to the Employees.

For a short time in 1944 the record shows that the clerical force at Forrest City consisted of—

Cashier

Station Helper,

following which period there has been two clerical positions at this station, that is, one Cashier and one General Clerk for many years.

The ordinary and normal duties of the General Clerk position at Forrest City, prior to its nominal abolishment as of June 20, 1952 were:

1. Check yard on switch list Form 7204 and get seal records as needed.
2. Transcribe seal records into seal record book, Form 1365.
3. Unload merchandise truck and check freight against waybills.
4. Invoice damaged merchandise and make proper notations on waybills.
5. Sweep and mop freight office.
6. Check and deliver merchandise to contract drayman.
7. Make OS&D reports as needed, Forms 1166-A, 1166-B, 1166-Rev. Form 6427, 6428-Rev., 6429-Rev., 6223-Jt.
8. Receive or deliver merchandise from and to individuals not served by contract drayman such as wholesale houses, furniture stores, individuals.
9. Deliver carload transfer waybills to Rock Island depot.
10. Abstract local and interline waybills on Form 4843 and balance freight totals against Cashier's pro book, Form 4842.
11. Sort delivery receipts, Forms 1151-4, 6400-8, 6400-10A, 6400 STL-9, etc., into local and interline pros and file same in numerical order.

12. File contract drayman receipts in numerical order.
13. Bill outbound LCL merchandise, Form 6400.
14. Bill LCL cotton, Form 6442-4, 6442-Rev.
15. Write up outbound waybills on Form 6750, local and interline.
16. Recouer and/or prepare damaged LCL and CL freight for shipment to Freight Claim Agent.
17. Check CL damage in box cars at consignee's unloading point and/or LCL concealed damaged freight at consignee's place of business.
18. Check and make bills of lading, Form 1883-Rev. on outbound merchandise brought to the depot by contract drayman and others.
19. Keep totals of in and outbound merchandise weights handled daily on Form 7640.
20. Make daily record of tank cars of petroleum products received by local bulk plant distributors on Form AY-15 1/8-10-46-93443-C MCB furnished to Freight Department by the Arkansas State Department Internal Revenue for State business.
21. Clean toilets and wash stands.
22. Make copies (in answer to correspondence) of delivery receipts, OS&Ds, outbound billing, etc., and search files for this information.

The balance of the time, if any, remaining to fill out the eight hour day utilized in some of the duties listed in the foregoing which would take more time on some days than on others and in working out duties in connection with compiling monthly reports and miscellaneous duties performed regularly at some time during the month. The monthly duties performed by this General Clerk included:

1. Recapping Forms 4843 local and interline and striking a monthly balance with Cashier's pro book, Form 4842.
2. Recapping Form 6750, local and interline and striking a balance with Cashier's cash book, Form 802-Rev.
3. Making detailed report of cars weighed at Forrest City Cotton Oil Mill each month.
4. Sweeping out freight warehouse as needed.
5. Waxing floor of office, unpacking and storing inbound supplies, bundling and filing monthly office forms.
6. Checking and supervising leveling of stop cars.
7. Unloading and/or checking carloads of merchandise to consignee on team track or on consignee's private siding.
8. Various other duties such as cleaning and straightening up freight in the warehouse, rearranging matters in the office as needed.

Following the nominal abolishment of the General Clerk job on June 20, the work in part was given to the Cashier to perform, however the Agent-

work as listed in these claims whether or not clerical forces were employed. It is clear also that the General Clerk position was put on at this station when the Agent-Telegrapher was not able to handle the increased volume of work, was taken off when the work decreased and was put back on when the work again increased. The situation has been one that falls squarely within the circumstances of the tradition awards and the flow and ebb awards.

This dispute is another good example of how a carrier gets caught in the vulnerable position between two crafts when a problem of jurisdiction over work arises. The Organizations have nothing to lose in claiming exclusive rights to work, but where the issue has not been definitely determined with respect to a given item of work the Carrier is caught in the hazard of penalty when it has no particular preference as to which craft does the work.

In this case the Carrier required an Agent-Telegrapher at Forrest City but did not also require a Cashier and a General Clerk. The time of the Agent-Telegrapher was not fully taken up with agency and telegraph duties. To say that clerical duties assigned to the General Clerk when put on may not ebb back to the Agent-Telegrapher would put the Carrier in the position of being required to maintain a full time Clerk with only a little more than three hours work per day or pay a Clerk that much overtime while the Agent-Telegrapher would remain idle for an equivalent amount of time, when the work involved is traditionally that of the latter employee.

It is the position of the Carrier that the scope of the Clerks' Agreement does not include exclusive right to any of the work here involved and that it is not brought under the Agreement even by the broadest awards that have been made on the issue in question.

(Exhibits not reproduced.)

OPINION OF BOARD: Before considering this dispute on its merits, it is necessary to dispose of a Motion in this docket to the effect that action be withheld pending the giving of notice of hearing to other parties involved.

In view of a number of awards of this Board and the decision of the Supreme Court of the United States in the case of Whitehouse vs. Illinois Central Railroad, and the finality of this matter (No. 131, October Term of U. S. Sup. Ct., 1954), followed by the dismissal of the cause of action by the United States District Court, the Board now has jurisdiction over the only necessary parties to this proceeding and over the subject matter hereof. Prior Award 5759 of this Board was ill advised.

The essential facts here are not in dispute. Involved is the propriety of the Carrier's action in abolishing, between June 20 and September 30, 1952, the position of General Clerk, Forrest City, Arkansas. The Petitioners allege that this action resulted in the removal of work from under the Agreement and the performance thereof by employees not covered thereby. Claim is made in behalf of R. E. Akers, Cashier, for four hours for each work day during the period above shown, for a total of \$743.10.

Except for a period of relative short duration, there have existed two clerical positions at Forrest City. These positions bore the title of Cashier and General Clerk. On June 20, 1952, the position of General Clerk was abolished and the duties of said position were reassigned to and performed by the Agent-Telegrapher either alone or with the occupant of the Cashier's position. However, on September 20, 1952, the position of General Clerk was restored and work performance continued as it had prior to the abolishment thereof.

The Organization asserts that the work here had historically been performed by clerical employees by virtue of which it came within the Scope Rule (Rule 1) of the effective Agreement and that the violation thereof is properly compensable under Rule 25 thereof.

Respondent denies that the work here was or is the type of work that belongs exclusively to clerical employees and asserts that it (the work) is properly assignable to Telegraphers (in this instance Agent-Telegrapher) during periods of low work load under the ebb and flow doctrine enunciated by this Board.

We are of the opinion that the work here is in part properly clerks' work to be performed by clerical employees. We think that Respondent recognized this to be true when it restored the position of General Clerk on September 30, 1952. Award 636 had the effect of modifying 615. In the latter award (615) this Board, in effect, held that the amount of clerical work which could be assigned to a telegrapher (to fill out his daily assignment) was limited only to his (the telegrapher's) capacity to perform same during the course of such assignment. Award 636 modified this to the extent that the telegrapher was required to perform assigned clerical work in the proximity of his post of duty; also, that such work (clerical) could not be brought to him to perform.

Awards 6293 and 6447, each involving the parties hereto, have been cited as controlling; as well as the agreement of the Respondent to apply 6293, as far as applicable, to the instant facts. We are of the opinion that Award 6293 is particularly applicable here in that the principle laid down therein (Award 6293) and in Award 636 clearly justifies a finding here that, at least a portion of the clerical work assigned to the Agent-Telegrapher, was clerical work coming within the scope of the effective Agreement and not properly subject to performance by one not covered thereby.

The record reveals that upon receipt of Award 6293 the Respondent in considering its (Award 6293) application to the existent facts conceded that the Petitioner's claims on certain items of work (items 6 and 11) were valid here. These items of work were as follows:

"6. Deliver various reports and waybills to the Rock Island depot covering all cars delivered that road, done jointly by Agent and Cashier. The Cashier delivered the majority of the papers. The Agent's time so devoted approximated 15 minutes weekly.

11. Check carload damaged lading at consignee's unloading place, done jointly by Agent and Cashier, taken over in part by the Agent. Time worked by Agent approximately 20 minutes per week."

A review of the various items of work listed as part of the overall work load performed indicates that other items of work, namely items 1, 3, 4 and 12, belong in the same category, that is, under existing circumstances the same constitute work of a clerical nature coming within the scope of the Agreement and not subject to performance by an employee not covered thereby. These work items are:

"1. Unloading less carload from truck (vehicle) and cars jointly with Cashier. Time worked by Agent approximately 20 minutes per day.

3. Checking and delivering less carload freight to contract drayman, done jointly by Agent and Cashier. Time worked by Agent approximately 15 minutes per day.

4. Check and deliver less carload freight to firms and others. Done jointly with Cashier. Time worked by Agent approximately 20 minutes per day.

12. Receive and issue bills of lading on LCL lading, outbound, performed jointly by Agent and Cashier. Time worked by Agent approximately 20 minutes weekly."

We conclude, therefore, and so hold, that the effective Agreement was violated when items of work above listed (items 1, 3, 4, 6, 11 and 12) were

assigned and performed as here evident and that to this extent Claims (1) and (2) are valid.

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 effective Agreement was violated to the extent indicated in the above Opinion.

AWARD

Claims (1) and (2) sustained to the extent indicated in the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1955.

DISSENT TO AWARD NO. 7197—DOCKET CL-6926

This award is erroneous.

The majority state:

"We are of the opinion that Award 6293 is particularly applicable here in that the principle laid down therein (Award 6293) and in Award 636 clearly justifies a finding here that, at least a portion of the clerical work assigned to the Agent-Telegrapher, was clerical work coming within the scope of the effective Agreement and not properly subject to performance by one not covered thereby."

Thus we find that the sole basis for this sustaining award is prior Awards 6293 and 636.

Going to Award 6293 we find there that the referee found that the Agent-Telegrapher had been sent away from the station into the yard to check certain tracks. Here the Agent-Telegrapher never left the station building when he performed Work Items 1, 3, 4 and 12.

Going to Award 636 we find this controlling expression as its basis:

"There was no shadow of proof nor of thought in that case that a telegrapher may be detached from his post and sent a mile away to an entirely unrelated location to take over a half a day of straight clerical work to facilitate the abolition of a clerical position." (Emphasis supplied).

Again, we here find that the Agent-Telegrapher was not detached from his post and was not sent to an unrelated location when he performed Work Items 1, 3, 4 and 12. Those four work items were performed at his post of duty within the station building.