

Award No. 12561
Docket No. CL-12079

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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 System Committee of the Brotherhood (GL-4832) that:

1. Carrier violated the Clerks' Agreement when, effective Monday, August 31, 1959, it removed from under the scope and operation of the Clerks' Agreement, a part of the station platform work, consisting of handling the U.S. mail and express off and on passenger trains Nos. 25 and 32, at Gurdon, Arkansas, and required Telegraph Operators, employees of another craft and class, covered by another Agreement, to perform that work, which was in violation of Rules 1, 2, 3, 5, 6, 45 and other related rules of the Clerks' Agreement;

2. Carrier shall be required to compensate Cashier Fay Marshall for a minimum call of two hours at the punitive rate of \$3.5775 per hour, amount \$7.16 for each day, August 31, 1959, through October 2, 1959, total 33 days, amount \$236.28;

3. Carrier shall be required to compensate Cashier Fay Marshall, his successor or successors, a minimum call of two hours at the punitive rate for each date subsequent to October 2, 1959, until the violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: Gurdon, Arkansas is located on the Carrier's Arkansas Operating Division, approximately eighty miles south and west of Little Rock, Arkansas.

For many years the Carrier had maintained a clerical force at the Passenger Station, and also at the Freight and Yard Office at Gurdon, Arkansas.

The clerical force in the Ticket Office at Gurdon, Arkansas at the time of the Mediation Wage Agreement, November 1, 1928, consisted of:

The Carrier has returned the work belonging to the employes coming within the scope of the Clerks' Agreement when it returned the handling of the baggage to the Clerks. U. S. mail is now being handled by clerks at Gurdon. This was in keeping with Award No. 14 of Special Board of Adjustment No. 239. The Employes involved in this dispute do not have any right to perform the work in question and the Carrier respectfully requests that the Board deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective August 31, 1959, Carrier assigned Telegraph Operators to a part of the station platform work at Gurdon, Arkansas. The work was handling U. S. mail and express off and on certain passenger trains. Petitioner claims the work had been exclusively performed by Clerks and was within the scope of the Clerks' Agreement; and, the transfer of the work to Telegraph Operators violated the Agreement.

The evidence establishes that Clerks had exclusively performed the work involved from 1893 to May, 1958. In May, 1958 Carrier assigned some of this work, at Gurdon, to Telegraph Operators. Clerks filed a claim which was disposed of by Special Board of Adjustment No. 239, Award No. 14, issued June 30, 1959.

In Award No. 14, the Special Board said:

"... This claim has to do primarily with handling U.S. mail, baggage and express off and on trucks and passenger trains; checking, separating, and delivering same; lining it up for loading on other trucks or passenger trains for outbound dispatch; and, the janitor work in and about the passenger station.

... it appears reasonably certain that the work here in dispute has been performed historically and traditionally down through the years by the clerical forces at Gurdon. It is the work of Clerks and should not have been removed from the Clerks' Agreement without their consent."

The Special Board found that the transfer of the work to Telegrapher Operators violated the Clerks' Agreement; and, it went on to say:

"The violation of the contract will be remedied by returning the station platform work at Gurdon to those employes entitled thereto under the Clerks' Agreement, and that will be the order of this Board."

We find upon the basis of the record in the instant case that the work involved has been exclusively performed by Clerks and therefore comes within the scope provision of the Clerks' Agreement. That a transfer of the work by Carrier, to other crafts or classes of employes violated the Agreement stands *res judicata*. Award No. 14, *supra*. We will sustain the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier violated the Clerks' Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 28th day of May 1964.