

Award No. 12777
Docket No. CL-12680

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, 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-4987) that:

1. Carrier violated the Clerks' Agreement, when, on Thursday, August 11, 1960, it utilized employes and supervisors not covered by the Clerks' Agreement to perform the work of transferring U. S. mail from bad order mail car No. 1153 to mail car No. 2055 in Texas and Pacific passenger train No. 28, at Alexandria, Louisiana, in violation of Rules 1, 2, 3, 4, 5, 6, 25 and related rules of the Clerks' Agreement.

2. The Carrier shall be required to compensate the following employes for Thursday, August 11, 1960, as follows:

W. Jones, Caller, for 40 minutes at the punitive rate of \$3.18 per, amount	\$2.12
B. Davis, Trucker, for 40 minutes at the punitive rate of \$3.15 per hour, amount	2.10
J. Newton, Trucker, for 40 minutes at the punitive rate of \$3.15 per hour, amount	2.10
J. T. Mitternight, Trucker, for 40 minutes at the punitive rate of \$3.15 per hour, amount	2.10
TOTAL CLAIM	\$8.42

EMPLOYES' STATEMENT OF FACTS: Alexandria, Louisiana, is located on the Carrier's Louisiana Division. The Carrier's passenger station at Alexandria, Louisiana, is operated on a joint basis with the Texas and Pacific Railroad, and both carriers operate passenger train service through the Missouri Pacific depot. The handling of all mail and baggage off and on the passenger trains is handled by the clerical force of the Missouri Pacific Railroad, covered by all the rules of the Clerks' Agreement, which force is carried on the Louisiana Division Station and Yards seniority roster.

On the date of claim the clerical force at the passenger station and local freight office at Alexandria, Louisiana, was as follows:

obvious, however, that the basis for the claim in Award 7186 is in no way comparable to and accordingly is of no value in determining the controversy now before your Board.

The circumstances prompting the claim in Award 7836 are in no way comparable to those involved in the instant case. The claim in this award was the result of Carrier assigning repair work on Piers "G" and "H", Port Richmond Terminal, to other than Maintenance of Way Employees. Certainly there is nothing in that case to support the Employees' contention in the instant case that clerical employees should have been used to transfer the bad order load here involved.

In conclusion, we would point out that the Employees have cited no award, precedent or practice on this property that would support their contention and claim in the instant case. Whereas, the Carrier has shown that performance of the work here involved — the transferring of a bad order load — is not work that has been assigned exclusively to or performed exclusively by clerical employees; that on occasions, various classes of employees have been used to perform this work. See Second Division Award 2845 showing the practice on this property which is the same today as when the award was rendered in 1958.

It is the position of the Carrier that there is no basis for the claim here presented, and it should, therefore, be denied.

OPINION OF BOARD: This claim is made on behalf of four employees for forty minutes' pay each at the punitive rate for Thursday, August 11, 1960. On that day, the Texas and Pacific passenger train 28 arrived at Alexandria, Louisiana, with mail car 1153, which had developed a hot box. It was necessary to transfer mail from the bad order car to mail car 2055. This transfer, which delayed the train about three-quarters of an hour, was made manually by the baggageman-porter, three warehouse truckers, the assistant superintendent, an agent, a car foreman and an electrician.

The Brotherhood contends that the Carrier should have used all clerical employees instead of the latter four persons listed above. They argue that there were sufficient clerical employees working nearby, and that it would have been just as efficient to call for two crews from the Freight House, as it was to call for one, to do the work.

The Carrier has presented three separate defenses to this claim. First, it alleges that an emergency situation existed, which justified the use of any available employees. Second, it asserts that the work involved is not the exclusive work of clerks, and third, Carrier says that the Claimants were fully engaged and under pay, and, therefore, they sustained no loss and as a result, they would not be entitled to compensation.

Decisions of this Board have established that the Carrier would be justified in its actions if in fact an emergency situation existed in this case.

Emergencies do not always appear as black or white. Certainly hindsight allows one to be more perceptive than he is at the time of the specific occurrence. However, we should allow certain latitude in judgment, for a person making a quick decision when faced with a situation which appears to him, at the time, to be an emergency.

Perhaps it is now possible to see that there may have been a better or more efficient method of handling the instant situation. However, it must have appeared at the time that it was of prime importance to transfer the mail sacks from the bad order mail car to the other car as quickly as possible. The fact that a hot box existed on the bad order car may not even have presented such an urgent problem as the impending further delay of the train.

We are of the opinion that the situation which existed justified the Carrier's actions in this case, and we will not attempt to say now whether such was the most expedient decision at the time. Since the Carrier had the discretion and latitude to act as it did, the claim will be denied.

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 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 not violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1964.