

Award No. 13624  
Docket No. CL-13540

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Ross Hutchins, 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-5229) that:

1. Carrier violated the Clerks' Agreement when, effective August 28, 1961, it unilaterally established in the Office of Auditor Freight traffic, General Office Building, St. Louis, Missouri, a so-called Re-audit Group, composed of five employees which the Carrier designated as Auditors, who were not covered by the scope of the Clerks' Agreement, to take over and perform the clerical work of rechecking abstracts covering Interline Forwarded Accounts, Interline Intermediate Accounts, Foreign Line Correction Accounts and Interline Received Accounts. This Carrier action was in violation of Rules 1, 2, 3, 4, 5, 6, 8, 25, 31, 45 and related rules of the Clerks' Agreement.

2. Carrier shall be required to compensate claimants

A. J. Wigge  
V. M. Johnson  
J. H. Kasselmann  
J. F. Christen  
F. M. Zieroff

each for 8 hours at Recheck Clerk punitive rate of \$4.00975 per hour, amount \$32.07, for Monday, August 28, 1961, with claims continuing for each claimant on the same basis for each subsequent work day, Monday through Friday, until the claims are allowed and clerical work here involved is returned to the scope and operation of the Clerks' Agreement.

**NOTE:** Claims on and after February 1, 1962 are subject to increases in hourly rates of pay as provided in the National Wage Agreement of June 5, 1962, Article I of that Agreement providing for increase of 4c per hour effective Feb-

ruary 1, 1962, and Article II providing for additional increase of .0628c per hour, effective May 1, 1962.

**EMPLOYEES' STATEMENT OF FACTS:** The office of Auditor Freight Traffic is located in the Missouri Pacific Building, St. Louis, Missouri and is a part of the Consolidated General Accounting Office seniority district and roster, which included the following six Accounting offices on date claims were initiated:

Auditor Freight Traffic  
Auditor Passenger Traffic  
Auditor Disbursements  
Auditor Station Accounts  
Car Accountant  
Data Processing Center.

On and prior to August 28, 1961, there were approximately 32 regularly assigned Recheck Clerks in the Transit Division of the offices of Auditor Freight Traffic, assigned to perform the following bulletined major duties:

"Applicant must be able to revise waybills, check transit privileges in connection therewith and prepare the debit statements (claims) or correction accounts against connecting lines for amounts which represent the difference between the revenue now in our account as against what our revenue should be based on thru rate origin to destination under transit. He must also handle correspondence and do such other similar or lower rated work as may be assigned, including trips to outside record room."

On the same date there were approximately 40 regularly assigned Recheck Clerks in the Recheck Division of the office of Auditor Freight Traffic, assigned to perform the following bulletined major duties:

"Rechecking interline accounts and issuing statements of difference or correction accounts adjusting errors found in settlement of such accounts. Also conducts correspondence and performs such other similar or lower rated duties as may be assigned, including trips to outside record rooms."

The Carrier requires the occupants of the Recheck Clerk positions to have the following qualifications:

"Recheck Clerk experience in this office or two years or more experience in this office as senior interline account clerk, senior revising or station relief claim investigator."

On August 23, 1961, the General Chairman wrote to Mr. B. W. Smith, Chief Personnel Officer, as follows:

August 23, 1961  
File: 6618  
Special Delivery  
Certified Mail

Mr. B. W. Smith  
Chief Personnel Officer  
Missouri Pacific Building  
St. Louis 3, Missouri

of the rules of the Clerks' Agreement pursuant to Exception 1 to Rule 1. All positions in that office are filled by appointment without regard for seniority, which is to say that claimants in any eventuality could have no agreement right to secure such positions.

In conclusion, the Board's attention is called to these important facts in this case:

1. The auditing of these records is a function never before performed on this Carrier. It is not work transferred from one office to another. It is newly created work.
2. Neither claimants nor any other employes have been deprived of any of their work because they have completed their work on these records.
3. All clerical work related to the functions of the auditors is performed by clerical employes.
4. For years carrier has utilized other auditors in the Office of the Controller not subject to any wage agreement to perform like auditing in other accounting offices (Car Accounts, Passenger Accounts, Disbursements), as well as the auditing of the General Accounts of its subsidiary lines. Carrier has also contracted for auditing work with outside audit firms such as Price Waterhouse and Company.
5. The Board has recognized in Awards 1802 and 5329 that auditing is not work reserved to clerical employes and that Carrier is privileged to contract for its performance by outside audit firms.
6. Even if the Board should err and determine this to be clerical work the claims would fall because the work is performed by an office fully excepted from all of the rules of the Clerks' Agreement where all positions are filled by appointment without regard to seniority and the claimants could not in any eventuality have secured the positions by reason of the Agreement.

In view of the foregoing, Carrier respectfully requests these claims be denied.

**OPINION OF BOARD:** When carload freight is handled by two or more carriers, the revenue is divided appropriately between all carriers who participated in the movement. To accomplish the division of revenue the Carrier who delivered the car at destination prepares a statement known as an Interline Abstract. A copy of the Interline Abstract is forwarded to each participating carrier Abstracts reaching the St. Louis office are checked and analyzed by Recheck Clerks. If the division of revenue is found correct, the abstract is approved and settlements are made accordingly. If the division is found incorrect, a statement of differences is prepared by clerks and referred to the carrier who originated the abstract. Statements are exchanged in an effort to reach an agreement on proper division of revenue.

The Claimants in this docket are Recheck Clerks.

The Carrier established on August 28, 1961, five new positions of Auditor,

who audit the abstracts completed by employees subject to the agreement. The clerical work necessary to effect corrections of the errors discovered by the Auditors is performed by employees subject to the agreement.

The Claimants argue that the work of auditing the work of Recheck Clerks is work belonging to the Claimants who are Recheck Clerks.

The Carrier contends that Auditing is not the work of Recheck Clerks.

In Award 1802 (Thaxter) this Board said:

"The checking and rechecking ordinarily done by the clerical force of the carrier had been completed in this instance. There was no more work which they could do. There is nothing in the agreement which bars the railroad from contracting for an outside audit and such an audit after the work ordinarily performed by the regular employees is completed is not an infringement of their duties, even though it does of necessity involve the performance of clerical work."

The same conclusion and the same quotation appear in Award 5329 (Robertson).

We consider these Awards controlling and applicable to the facts in this docket. We do not consider it necessary to comment on any other issue herein.

**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 28th day of May 1965.

**LABOR MEMBER'S DISSENT TO AWARD 13624, DOCKET CL-13540**

This claim arose from the fact that on August 28, 1961, the Carrier established five (5) positions in the Recheck section of the office of Auditor Freight Traffic and unilaterally declared them to be excepted from the Rules Agreement. Those positions, as result of Carrier's unilateral determination that they were "excepted", were not advertised to the Employees holding seniority rights to vacancies and/or new positions in the seniority district involved. Instead, the Carrier unilaterally established such matters as rates of pay, hours of service and other working conditions, and chose certain employees and placed them on the positions without any regard whatsoever to the Agreement.

The office of Auditor Freight is located on the fourth floor of the Missouri solidated General Accounting Office which constitutes a seniority district and Pacific General Office Building at St. Louis, Missouri. It is a part of the Con-roster. There are sub-departments (formerly separate seniority districts) included in the office consisting of:

- Auditor Freight Traffic
- Auditor Passenger Traffic
- Auditor Disbursements
- Auditor Station Accounts
- Car Accountant
- Data Processing Center (Accounting Machine Bureau)

The office of Auditor Freight Traffic is further divided into sub-sections known as:

Interline	CCC-Government
Recheck	Overcharge
Local	Revising
Comptometer Coding	Transit

The Recheck section was the one involved in this dispute. At the time the five disputed positions were established there were from 56 to 72 regularly assigned Recheck Clerks. Recheck Clerks were assigned by bulletin to perform the following major duties:

"Revise waybills, check transit privileges in connection therewith and prepare the debit statements (claims) or correction accounts against connecting lines for amounts which represent the difference between the revenue now in our account as against what our revenue should be based on thru rate origin to destination under transit. He must also handle correspondence and do such other similar or lower rated work as may be assigned, including trips to outside record room."

also,

"Rechecking interline accounts and issuing statements of difference or correction accounts adjusting errors found in settlement of such accounts."

The qualifications required by the Carrier for an Employee to be assigned to a Recheck Clerk position is:

"Recheck Clerk experience in this office or two years or more

experience in this office as senior interline account clerk, senior revising or station relief claim investigator."

Claimants named, by virtue of the fact that they were regularly assigned Recheck Clerks, senior to those chosen by Carrier for the five new positions, possessed the qualifications necessary to properly perform the functions required of the positions here involved.

There was no substantial differences as to the physical setting or organization of the offices and departments. The dispute arose from the fact that Employees insisted that the five new positions, performing work in the same manner and same office as the Recheck Clerks, should have been under the Agreement and advertised for seniority choice. The Carrier claimed that neither the work performed on the positions nor the positions themselves were covered and that the five new positions and the employees were actually in and/or of the Office of Controller and, therefore, not subject to any provisions of the Clerks' Agreement.

The facts with respect to the detail work being performed by the occupants of the five newly-established positions, as compared with the work of Recheck Clerks, clearly indicated that, rather than new work being undertaken, the establishment of the five positions merely permitted an expansion of the ongoing work in the Recheck section.

Traveling Auditors, both limited and unlimited as to numbers, are listed at pages 14 and 15 of the Agreement under ACCOUNTING AND FINANCE DEPARTMENT in Auditor of Disbursements, Auditor Station Accounts and Car Accountant districts. Such listing under Auditor Freight Traffic does not appear although some twelve positions and/or titles are listed therein as excepted. At page 7 of the Agreement, under the same heading, there is listed "Traveling Auditor", singular, thereby indicating that the parties had agreed to one Traveling Auditor being excepted. All such "Exceptions" were negotiated. The five newly-created positions were not established as result of negotiations. It was clearly pointed out to the Referee that the various employees, positions and offices, which were excepted, were arrived at through the process of collective bargaining; that such matters were not subject to the whim of Carrier nor were such vital matters retained by Carrier as one of its prized prerogatives. The Agreement attested to that.

It was apparent that Carrier sought to evade the Agreement through the guise of changing "titles" and by calling additional recheck work "specialized" or "auditing" work. In short, Carrier and the Referee failed to recognize that the Agreement applied to the character of work and not merely to the method of performing it. Such a pronouncement had been set forth many times by this Board, for example, in Awards 864, 1092, 3706, 3746, 4448, 4576, 4688, 5117, 5410, 6448, 7239, 8217, 10498, 10577, 10736 and many others. The Referee also overlooked the fact that work is the essence of a position as expressed in Awards 1314, 5785, 5790, 7372, 8500, 9416, 10189, 10633, 11062, and many others.

Employees had no quarrel whatsoever with Carrier's determination that it would be desirable to check each and every abstract rather than, as before, only those abstracts assigned by the personal clerk and those wherein correction accounts had been issued. Employees did, however, strenuously object to Carrier's determination that it could choose to have this work performed by whomsoever it pleases on the basis of embracing and "adopting" the findings

in Awards 1802 and 5239. Those Awards were rendered in disputes on other Carriers, and held in those cases and under those circumstances, that the Carriers there involved could contract with outsiders for the purpose of "auditing" the work performed by Carrier employes. It was important, and was pointed out to the Referee in the instant case, that while Carrier asserted such a right, it did not so proceed. It chose, instead, to have its own employes perform the work. It should not have followed that in so doing Carrier could arbitrarily and unilaterally choose which of its many qualified employes could do the work. From early Award 122 to very recent Award 11062, it had been held that the duties assigned and performed govern the classification and that (Awards 2091, 2737, 7066) the title ascribed to a position was immaterial. As a matter of fact, Award 123 involved a dispute between these same parties and held, in part, that changing a title from Head Janitor to Building Custodian did not remove the position from the Scope of the Agreement. Likewise here, the mere titling of the five Recheck Clrk positions to that of "Auditor" did not, and should not, have removed either the positions or the work from the Agreement. If the Carrier felt that certain positions in the Recheck section should have been "excepted", it had the duty to follow the procedures set out in the Railway Labor Act and the current Clerks' Agreement rather than, as here, proceeding unilaterally to ignore those processes and seek approval of its acts from this Board. That it was successful merely points up the crying need for trained Referees.

There were certain employes, positions and offices excluded from some or all of the Agreement rules. The very fact that some positions were excluded indicated that all others, however designated, were to be under or within the comprehension of the terms of the Agreement. Award 4110 and others starting with 2009, 3825, etc., dealt with the maxim that where one exception is clearly expressed no others would be implied. That maxim clearly fit this case but was ignored.

The Agreement upon which the Employes relied and their theory of application was clearly set forth in the record. The Referee should have carefully noted those arguments and considered the effect of the Agreement and the effect of permitting this Carrier to arbitrarily designate which work was and/or what employes were not covered by that Agreement.

In short, the Agreement spelled out which Auditors and others were excepted therefrom and, therefore, Carrier was not and is not, this erroneous "Award" notwithstanding, free to unilaterally establish other and additional "excepted" positions.

It was a gamble which Carrier won in the instant case, mainly because it was decided by a neophyte Referee whose reasoning, as made clear in his remarks as well as his "Awards", is not based on the Agreements he is charged with interpreting but, rather, on his obvious "laissez faire" philosophy which has been exhibited too often.

Cases should not be decided on the basis of any Referee's personal predilections. The Referee ignored many prior Awards and adopted two Awards which held that the Carriers there could do something other than what was done in this case. It is not surprising that he considered it unnecessary to comment further.

This Award is in serious and harmful error and I most vigorously dissent thereto.

(Signed) D. E. Watkins,

Labor Member

6-25-65