

Award No. 15158

Docket No. CL-15813

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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-5806) that:

1. Carrier violated the Clerks' Agreement when, effective Sunday, August 30, 1964 and each subsequent Sunday, 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 off and on Passenger Train No. 3 at Newport, Arkansas, and required Train Porters, employees of another craft and class, covered by another Agreement, to perform that work, which was in violation of Rules 1, 2, 3, 5, 25, 45 and other related rules of the Clerks' Agreement.

2. Carrier shall be required to compensate Chief Clerk-Cashier T. L. Robinson for a minimum call of two hours at the punitive rate of \$3.97875 per hour, amount \$7.96, for each Sunday, August 30, September 6, 13, 20, 27, October 4 and 11, 1964, total 7 dates, amount \$55.72, with claims continuing on the same basis for the claimant or his successor(s) for each Sunday, subsequent to October 11, 1964, until violation is discontinued.

NOTE: All claims are subject to wage increase of 9 cents per hour, effective January 1, 1964 and 9 cents per hour effective January 1, 1965, per Mediation Wage Agreement A-7127 and A-7128, of November 20, 1964, and all subsequent wage increases.

EMPLOYEES' STATEMENT OF FACTS: Newport, Arkansas, is located on the Carrier's operating division, known as the Arkansas Division, approximately 80 miles north of Little Rock, Arkansas.

For many years, the Carrier has maintained a clerical force in the Agent's office located in the passenger station at Newport, Arkansas.

ments of Rule 43 of the Clerks' Agreement have not been met. See Third Division Award No. 11754.

Effective August 30, 1964, the Carrier discontinued calling Chief-Clerk-Cashier on Sundays to load and unload mail at Newport and train porter on Train No. 3 performs the work. It being your contention that this is work reserved exclusively to clerks.

The work of handling U.S. Mail on and off trains is subject to the control of the U.S. Post Office Department and, therefore, has not been reserved to any craft. Mail has been handled by several classes of employees, such as train porters, trainmen, telegraphers, clerks and Express Agency employees, and has never been assigned exclusively to any craft or class of employee.

For the reasons set forth above, the claim here presented is invalid. Furthermore, for the reasons stated herein, there has been no violation of the applicable agreement and this claim, therefore, is respectfully declined.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: Carrier abolished the general yard clerk position at its Newport, Arkansas station and rearranged the hours and assigned duties of the remaining clerical positions. Under the new arrangement, no clerk was on duty on Sundays and the loading and unloading of United States Mail for Train No. 3 was performed by the on-train porters.

The Brotherhood, on behalf of Mr. T. L. Robinson, Chief Clerk Cashier at Newport, makes claim that Carrier violated the Clerks' Agreement when, effective Sunday, August 30, 1964, and each subsequent Sunday, it removed work from employees under this Agreement and required employees of another craft to perform it.

In its denial, Carrier maintains that the handling of United States Mail is not reserved to any particular craft. It also asserts that on-train employees have placed mail in platform boxes or deposited it in the station after removal from trains. It points out that in order to support a claim for the exclusive right to perform specific work under a general scope rule, Brotherhood must prove a past practice on a system-wide basis. Since there is no showing of such a practice, Carrier contends that the claim is without merit.

The record establishes that the work of handling the United States Mail off and on the passenger trains at Newport, Arkansas was performed for thirty-four years by employees subject to the Clerks' Agreement. Although there is no evidence to support a system-wide practice of clerical employees exclusively performing this work, it appears that the parties by their action mutually understood and agreed that at the Newport station this work was under the jurisdiction of employees covered by the Clerks' Agreement. The record further shows that the parties negotiated a contract in 1952 without altering the practice, and clerical employees continued to perform this work at Newport.

The work that was performed on the Sundays in question was the same work handled by claimant, Chief Clerk Cashier Robinson during his regular

workweek. Under Rule 24 of the Clerks' Agreement Claimant had the right to perform this work and Carrier acted improperly when it assigned it on Sundays to employees of another craft.

For the reason stated we hold that the Agreement was violated, and the claim is sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January 1967.