

Award No. 16833
Docket No. CL-17510

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYEES**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6397) that:

1. Carrier violated the Clerks' Agreement when, effective Tuesday, September 8, 1964, it moved approximately four hours of station accounting and clerical work from the Chief Clerk-Cashier position at Newport, Arkansas, and required the Star Agent-Telegrapher at that point to perform it, in violation of Rules 1, 2, 3, 5, 25, 45 and related rules of the Clerks' Agreement.

2. The Carrier shall be required to compensate Mr. T. L. Robinson, Chief Clerk, for four hours at the Chief Clerk-Cashier punitive hourly rate of \$2.97875, amount \$15.92, for Tuesday, September 8, 1964, with claims continuing on the same basis for the claimant or his successor(s) for each subsequent date, Monday through Saturday, until claims are allowed and the violation is corrected by returning the station accounting and clerical work to employees subject to the Clerks' Agreement.

NOTE: Claims are subject to all general wage increases obtained subsequent to the first claim date.

EMPLOYEES' STATEMENT OF FACTS: Newport, Arkansas, is located approximately 85 miles north and east of Little Rock, Arkansas, on the Carrier's operating division known as the Arkansas Division.

On and prior to Friday, September 4, 1964, the assigned station forces at Newport were as follows:

Position, Occupant And Daily Rate	Assigned Hours	Meal Period	No. Days Per Week	Rest Days
Chief Clerk-Cashier T. L. Robinson \$21.22	8:00AM-5:00PM	12N-1PM	6	Sat&Sun

violation of the applicable agreement and this claim, therefore, is respectfully declined.

Yours truly,

/s/ B. W. Smith

cc: J. G. Sheppard (62111)"

OPINION OF BOARD: On August 25, 1964, the Carrier's Superintendent issued notice that a General Clerk's position at Newport, Arkansas, would be abolished at the end of tour of duty on September 4, 1964. The Petitioner contends that in making changes in hours of assignment of the remaining clerical forces and re-arranging the clerical work, approximately four hours of such work was transferred to the Star Agent-Telegrapher, which it alleges violated the applicable Agreement covering clerical employees.

The Carrier denied the claim on the ground that clerks do not have an exclusive right to all clerical work at Newport or at any other station on the system, and that at Newport, as at numerous other stations on the system, clerical work has been and continues to be performed by clerks, telegraphers and others.

Numerous Awards of this Division and Awards of Special Boards of Adjustment have been cited by the parties in support of their respective positions.

The more recent, and, in our opinion, better reasoned Awards of the Division, have, in interpreting general type Scope Rules such as involved herein, applied the principle of determining whether or not the work in dispute has been performed solely and exclusively by employees covered by the Petitioner's Agreement through custom, tradition and past practice on the Carrier's system, and that the burden of proving such sole and exclusive right through custom, tradition and practice, is on the Petitioner. (Awards 15458, 14593, 14327, 14944, among others.)

Furthermore, the question of whether work formerly done by employees under the Clerks' Agreement, due to reduction in forces, can be assigned to employees under the Telegraphers' Agreement, has been before this Board many times. See Award 14085 and others cited therein.

The Petitioner had the burden of proving that the work assigned to the Star Agent-Telegrapher belonged exclusively to the Clerks under their Agreement. This it has failed to do.

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.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1968.