

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19234
Docket Number CL-19243

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6920)
that:

1. Carrier violated Memorandum of Agreement dated February 1, 1967, between the Missouri Pacific, Missouri Pacific Truck Lines, and the Brotherhood of Railway and Airline Clerks, when, beginning May 12, 1970, it did, without conference, negotiation or agreement, arbitrarily and unilaterally transfer clerical work from under the scope and operation of the Clerks' Agreement to position under another craft and class of employees at Leavenworth, Kansas, which was clerical work in connection with Missouri Pacific Truck Lines, preserved for clerical employees under the scope of the Clerks' Agreement by the Memorandum of Agreement dated February 1, 1967;

2. Carrier shall be required to compensate the senior available Clerk and former occupant of Chief Clerk-Cashier position at Leavenworth, Kansas, Mr. R. M. Kalhorn, seniority date June 24, 1941 on the Omaha Division Station and Yards seniority roster, or his successors, for eight hours at the daily pro rata rate of \$28.06, for May 12, 13, 14, 15 and 18, 1970, total \$140.30, with claims continuing on the same basis for each subsequent work day, Monday through Friday, until violation is corrected.

OPINION OF BOARD: Prior to May 11, 1970, the Carrier maintained an Agent and two clerical employees at Leavenworth, Kansas. The clerical employees, in addition to performing Carrier's clerical work, made inspections of damaged freight, handled salvage and made OS&D reports for the Missouri Pacific Truck Lines, a motor freight carrier which is a separate corporate entity from Carrier. Effective May 11, 1970, the two clerks' positions were abolished since the volume of rail work had decreased to the point where these positions were no longer needed. Thereafter, the clerical work was performed by the Agent at Leavenworth.

The Organization contends that abolishment of these clerical positions violated the Memorandum of Agreement of February 1, 1967 between it and the Missouri Pacific Railroad Co., the Texas and Pacific Railway Co., the Missouri Pacific Truck Lines, Inc. and the Texas and Pacific Motor Transport Co. The Memorandum provides, in pertinent part:

"1. Missouri Pacific Truck Lines Inc... clerical work... on freight moving on motor transport tariff rates which is now performed by clerks employed by the Rail Carriers parties to this Agreement will continue to be performed by such rail clerks the same as at present."

It is the position of the Organization that the above Agreement reserves to clerks all clerical work in connection with the Missouri Pacific Truck Lines performed by clerks at the time of the Agreement. And since the two clerical employees at Leavenworth performed such work on February 1, 1967, Carrier violated the Agreement when it transferred said work to the Agent, an employee not covered by the Clerks' Agreement.

The Carrier denies such contention on the ground that this Agreement did not freeze clerical positions at Leavenworth or any other point; that the Agreement only provided that clerks would perform Truck Line clerical work only as long as clerks were employed at that point; and that the Agreement contained no prohibition preventing an Agent from performing the work in question.

The Board finds that Carrier's contentions are well founded. All the Agreement says is that if a clerical position is established or if one exists, it will perform Missouri Pacific Truck Line clerical work as well as Carrier's clerical work. The Carrier did not agree to maintain unneeded clerical positions for the sole purpose of handling Truck Line clerical work, irrespective of how minimal or sporadic such work may be. This clearly was not the intent of the parties when they entered into the Memorandum of Agreement nor can we supply such meaning via contract interpretation.

The Agreement contemplates that Truck Line clerical work would be performed in the same manner as Carrier's clerical work. When the last clerical position at Leavenworth was abolished, the remaining clerical work was assigned to the Agent as has historically been done in the past. And since Truck Line clerical work is to be performed in the same manner as Carrier's clerical work, this too can be transferred to the Agent when the clerical positions were abolished. The Carrier did not agree to freeze its clerical force as of the date of the Agreement in order to perform the Truck Line work, and we are without authority to impose such a restriction in the absence of a clear, unambiguous contract to the contrary.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1972.