

C O P Y

ORG. FILE 20-83
CARRIER FILE 140-452-61
NRAB FILE CL-8464

AWARD NO. 10
CASE NO. 10

SPECIAL BOARD OF ADJUSTMENT NO. 174

PARTIES The Brotherhood of Railway and Steamship Clerks,
 Freight Handlers, Express and Station Employees
TO

DISPUTE The Gulf, Colorado and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the current Clerks' Agreement when it removed from the scope and operation of that Agreement routine schedule work and requires or permits one who occupies a position wholly excepted from the provisions of the Agreement to perform said routine schedule work and,

*(b) The senior qualified and available off-in-force-reduction employee on the Southern Division shall now be paid eight (8) hours pro rata rate, and rate of pay of \$15.39 per day for each day violations occur from July 1, 1954, forward until violations corrected; and if there be no such off-in-force-reduction employee, then the senior qualified off-duty Class 1 Clerk at Sweetwater shall be paid eight (8) hours at time and one-half at the rate of his regular position, or at rate of \$15.39 per day, whichever is the higher, from July 1, 1954, forward until violations are corrected.

*NOTE: To be determined by joint check of payrolls and other Carrier records.

FINDINGS: Special Board of Adjustment No. 174, upon the whole record and all the evidence, finds and holds:

The Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

The Chief Clerk to Agent position at Sweetwater is a position excepted from the Scope of the Agreement by the express provision of Article I Section 1(c).

The claim is that the Chief Clerk has been performing the following 'routine schedule clerical work' at Sweetwater during the cotton season at Sweetwater as follows:

- Item 1. Make list of inbound cotton from waybills.
- Item 2. Write this information in Record Book.
- Item 3. Place numbers on Railway Cotton Delivery Manifests, Form 1465 Std., which Carrier furnishes to Compress for unloading purposes.
- Item 4. Go to Cotton Compress and collect information on outbound cotton loading.
- Item 5. Check outbound record against inbound to see what cars of cotton loaded and date moved.
- Item 6. Make check of compress tracks for information of Yard Switch Crews in doing industry switching.

The claim is based upon a "Memorandum of Interpretation of Application of Articles I and II of Agreement to become effective October 1, 1942" which so far as pertinent reads:

"In the application of Articles I and II of Agreement to become effective October 1, 1942, it is understood and agreed that the work of Class 1, 2 and 3 employees, referred to in said Agreement, when performed by officials and others not covered by the Agreement, incident to or as a consequence of their official or other positions, is not subject to the provisions of said Agreement."

The Chief Clerk in practice always has traditionally performed all of the work under claim, both before and after the adoption of the Memorandum Agreement in 1942, except during the periods:

September 1, 1929 to April 1, 1930
September 18, 1930 to January 5, 1931
November 3, 1933 to February 9, 1934

when a temporary position of Cotton Clerk was established to handle an unusually heavy volume of cotton business.

First. This is not a case like Award 5621 (this property) where all of the work was of a special nature compiled for the information of the Superintendent, rather than routine clerical work, and so was work "incident to or as a consequence" of the excepted position within the meaning of the Memorandum Agreement. While some of the work comprised within the six items under claim may have been incidental to the work of the Chief Clerk position, some of it was not. It is unnecessary to determine this question item by item in view of the conclusion we have otherwise reached on the proper disposition of this claim.

Nor is this a case like Awards 3191, 3192 and 3504 (all on this property) where in practice the work traditionally performed by the excepted position had always been entirely supervisory in nature.

Second. The work under claim here, whether routine clerical work or not, has in practice been traditionally performed by the excepted position, both before and after the adoption of the Memorandum Agreement in 1942, except during the 1929, 1930 and 1934 cotton seasons when the volume of work exceeded the capacity of the Chief Clerk to perform and a temporary position of Cotton Clerk was established.

Under the doctrine applied by Awards 5199, 5458 and 5489 (all on this property) notwithstanding the adoption of the Memorandum Agreement, this claim must be denied.

It is the policy of this Special Board to act upon the Agreement as interpreted by Third Division awards on this property, whether we agree with the awards or not, provided they are not palpably erroneous. We are unable to conclude that Awards 5199, 5458 and 5489 are palpably erroneous.

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Third. The Carrier has challenged the technical validity of the claim upon the ground that the claimant is not named. In view of the conclusion we have reached on the merits, we find it unnecessary to express any opinion on this question.

A W A R D

Claim denied.

/s/ Hubert Wyckoff
Chairman

/s/ A. D. Stafford
Carrier Member

/s/ J. D. Bearden
Employee Member

Dated at Chicago, Illinois December 19, 1958