

C
O
P
Y

AWARD NO. 6
NRAB DOCKET NO. CL-8185
CASE NO. 6
SSW FILE R-51-994-2
BRC FILE NR-27-32

SPECIAL BOARD OF ADJUSTMENT NO. 169

PARTIES } The Brotherhood of Railway and Steamship Clerks
TO }
DISPUTE } St. Louis Southwestern Railway Company

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

(1) That Carrier violated the Clerks' current Agreement when the duty of going to the Pine Bluff Arsenal to sign and pick up bills-of-lading was taken away from the Abstract Clerk position and performed by the Agent and/or others not covered by the Agreement.

(2) That Abstract Clerk G. B. Silaz be reimbursed for one hour and thirty minutes time at the overtime rate for February 26, 1954, and likewise for all* subsequent dates when the Agent and/or others not covered by the Agreement makes trips to the Pine Bluff Arsenal to sign and pick up bills-of-lading; with a minimum of eight (8) hours at the overtime rate for any Sunday or holiday work involved, until such violation is corrected.

*NOTE: Claims for subsequent dates to be developed by joint check of Carrier's records.

(3) That this work of making trips to the Pine Bluff Arsenal be reinstated to employees coming within the purview of our agreement.

FINDINGS: Claim is made that certain work of going from the Pine Bluff station to the Pine Bluff Arsenal to sign bills of lading and pick them up and return them to the station had been assigned to the abstract clerk, Claimant G. B. Silaz, who for some years performed this work, and that when, on February 26, 1954, the Carrier discontinued having the abstract clerk do this work that claimant should be compensated for the overtime that would have been required to do this work outside regularly assigned hours.

It is contended by the Organization that these duties having been assigned to the abstract clerk, it placed the duties squarely under the scope of the Clerks' Agreement and that to require anyone else to do this work subsequently was violative of the Clerks' Agreement. Signing bills of lading has always been recognized primarily as the duty of the agent, but in large offices where the other duties of the agent become paramount it has always been recognized that he could assign the authority to one or more employees in his office to sign bills of lading. The Organization takes the position that where in such situations the authority to sign bills of lading has been assigned as part of the duties of one operating under the scope of the Clerks' Agreement that it then becomes work under the agreement which cannot be unilaterally removed. The gist of the case before us here is to what extent the duties involved were assigned to a clerical position, and in order to analyze that phase of the case we will go to the original assignment notice assigning the work. That notice reads as follows:

"Effective Monday, March 1st, 1948 the duties of making trips to the Pine Bluff Arsenal to sign ladings for our patrons there will be assigned to your position.

"You will be allowed to submit statement monthly covering actual mileage at five cents per mile for use of your automobile in connection with handling this part of your work.

"You probably will not make more than four trips per week, as the Arsenal does not work on Saturdays and too Mr. Swann will probably wish to make at least one trip per week and he will so advise you so that will not be necessary for you to go."

The notice, to say the least, is a most indefinite notice. Taking the notice as a whole, you get this out of it: That effective March 1, 1948, duties of making trips to the Pine Bluff Arsenal to sign bills of lading were assigned to the position. If that could be taken alone it would amount to a definite assignment to the claimant's position here involved. However, the third paragraph of the notice definitely limits the authority of the clerks to the exclusive rights of this duty. It says "you probably will not make more than four trips per week, as the Arsenal does not work on Saturday and too Mr. Swann will probably wish to make at least one trip per week." It is rather an expansion of the imagination to reach a conclusion that the exclusive duties of doing this work were assigned to a clerical position. Apparently it assigned the duties to both the clerk and a Mr. Swann, who was not under the scope of the Clerks' Agreement but who was in fact a General Agent, and the notice reserved the rights to Mr. Swann to make as many trips as he desired by notifying the clerk he would not be required to do it. There is considerable merit in the Organization's position that regular clerical duties assigned to a clerk for as long as this assignment was in existence brings the job under the scope of the Clerks' Agreement, but that is only when there is a definite assignment of the work to the exclusion of everyone else. A broader view to such situation is that when it is the traditional duty of the clerks throughout the industry, then it becomes a traditional part of the scope of the Clerks' Agreement. We can't help but be driven to the conclusion in this case that the assignment of these duties did not comply with even the position the Clerks urge in this case, as it was a part-time assignment and an indefinite part-time assignment at that; that he might be required to do it one day or five days per week, or he might not be required to do it anytime during the week, provided Mr. Swann desired to do it; and there was not a definite delegation of these duties to anyone under the Clerks' Agreement and to hold so would be to go beyond any holding this Board is aware of in matters of this kind.

The question has also been raised that the work of going to the Pine Bluff Arsenal on rest days and holidays of this assignment could not be performed by anyone else not covered by the agreement. In the above analysis of the duties involved here, this was not the exclusive work of this clerk nor was it exclusively under the scope of the Clerks' Agreement. Therefore, others performing the work on rest days or holidays, or even on week days or work days, of this assignment was not violative of the agreement and, therefore, no claim could be supported under the original assignment as pointed out above.

AWARD NO. 6

We are, therefore, driven to the conclusion that it was not the exclusive work of the Clerks, and to hold that no one else could do it would be an erroneous holding in this situation and that, therefore, the claim cannot be sustained.

AWARD: Claim denied.

/s/ Frank P. Douglass
Frank P. Douglass, Chairman

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member
(Dissent attached)

/s/ L. C. Albert
L. C. Albert, Carrier Member

Tyler, Texas
March 11, 1957.

EMPLOYEES' DISSENT TO AWARD NO. 6

In this Award the majority finds:

"The gist of the case before us here is to what extent the duties involved were assigned to a clerical position, and in order to analyze that phase of the case we will go to the original assignment notice assigning the work."

After quoting Agent J. W. Sanders' letter of February 26, 1948, to Abstract Clerk R. S. Clark, the majority states:

"It is rather an expansion of the imagination to reach a conclusion that the exclusive duties of doing this work were assigned to a clerical position. Apparently it assigned the duties to both the clerk and a Mr. Swann, who was not under the scope of the Clerks' Agreement but who was in fact a General Agent, and the notice reserved the rights to Mr. Swann to make as many trips as he desired by notifying the clerk he would not be required to do it."

The first paragraph of Mr. J. W. Sanders' letter of February 26, 1948, cannot be misunderstood, since he stated:

"the duties of making trips to the Pine Bluff Arsenal to sign loadings for our patrons there will be assigned to your position." (Emphasis supplied)

In the third paragraph of his letter Mr. Sanders advised the Abstract Clerk:

"You probably will not make more than four trips per week, ***." (Emphasis supplied)

The above language is clear, and can only mean that the Abstract Clerk would probably not make more than four trips per week, but that it was possible he would be required to make more than four trips per week.

If there was any doubt in the mind of the majority as to the meaning of the assignment, they were advised at the hearing on March 11, 1957, concerning the actual days worked by Claimant G. B. Silaz, as recorded on mileage allowance Forms 3773 and 3774, approved by Agent J. W. Sanders, indicating that: Forms 3773 - 3774, approved by Agent, show that G. B. Silaz made a trip to the Arsenal every week day and one Saturday in June, 1951; every week day and four Saturdays in December, 1951; every week day and one Saturday (2 trips) in January 1952; every week day (except February 11th, Monday), and three Saturdays (2 trips on two of these Saturdays) in February 1952; every week day and one Saturday in April 1952; every week day (except October 6th, Monday), and two Saturdays (2 trips on Saturday, October 18th) in October 1952; every week day (except January 28th, Wednesday), and two Saturdays in January 1953; every week day and one Saturday in March 1953; and every week day and one Saturday in April 1953.

It was called to the attention of the majority that Employees' Exhibit A-2 contained the duties of the Abstract Clerk position, prepared on June 5, 1953, at the request of the Division Superintendent at Pine Bluff, the last item reading:

Employees' Dissent to Award No. 6

"Go to Pine Bluff Arsenal, daily, to sign carload bills of lading, and bring same to Freight Office for outbound billing - 2 hours."
(Emphasis supplied)

The above assignment of duties was never disputed by Carrier.

The majority were shown a copy of Superintendent C. B. Petticrew's Advertisement No. 21 of April 11, 1944, establishing a new position of Receiving Clerk at the Pine Bluff Arsenal, which was assigned to G. E. Ivers on Advertisement 23 of April 26, 1944. Concerning the duties of this position, Carrier stated on page 2 of its Submission:

"Primary duty of this position was to receipt for LCL shipments moving from the arsenal in trap cars to Pine Bluff freight station. This clerk also signed for some, but not all, of carload shipments, as the General Agent continued making trips to the Arsenal and signed for and picked up loadings covering carload shipments on such trips."

At the hearing, Vice General Chairman F. T. Byous stated that when he was assigned to the position of General Clerk at Dallas, it was his duty to sign bills of lading, and that the Agent did not sign them. (Manager Personnel L. C. Albert verified this via the telephone during the hearing. Mr. Albert also called the Tyler Agent during the hearing and determined the Agent did not sign bills of lading.)

To show further that it was the practice on this property at larger stations, such as Pine Bluff, to assign the duty of signing bills of lading to clerks, we produced Division Superintendent W. G. Hazlewood's Advertisement No. 6 of February 25, 1957, Rate and Bill Clerk position, North Fort Worth, Texas, which included duties of "picking up billing on packing house products"; Advertisement No. 2 of January 10, 1957, Clerk, Gilmer, Texas, which included duties of "sign bills of lading"; and Division Superintendent J. R. Holden's Advertisement No. 16 of February 28, 1957, Yard Clerk, North Little Rock, Arkansas, which included duties of "sign bills-of-lading at industries".

It was pointed out that the duty of signing bills of lading at the Pine Bluff Arsenal had been performed for six consecutive years by the occupant of the Abstract Clerk position (from March 1, 1948 to February 26, 1954), and that Award 6101 and others upheld our position that past practice, custom and tradition, brought this work under the Scope of our Agreement.

Reference was made to Award 7427 and particularly to that portion reading:

"Carrier would distinguish Awards 5622, 5623 and 5772 from this case on the basis that the conclusions in those cases were reached by reason of the EXCLUSIVE assignment of the work involved to clerks for five days per week. In this case, the Carrier argues the assignment was not exclusive because of the occasions on which, for the sake of convenience, the agent-telegrapher did this kind of work

Employees' Dissent to Award No. 6

during Claimant's regular assignment. However, we do not think that the use of the phrase 'exclusively assigned' in those cases has the restricted meaning which Carrier would give to it; namely, that the clerk did every bit of the work. Rather, we think the meaning intended was that the work was regularly, ordinarily and customarily accomplished by the clerks as part of the regular duties of their assignments - a state of facts which is admitted to be so in this case. We think that the work in question was 'exclusively' assigned to Claimant within the meaning of that phrase as used in Awards Nos. 5622, 5623 and 5772 and that the principles and findings of those awards, involving the same parties as here, require that the claim be sustained in this case. We think it is not inconsistent to hold that an agent-telegrapher may perform certain occasional clerical work as a matter of convenience during the clerk's regular assignment, but that such work may not be assigned entirely to the telegrapher in lieu of calling a clerk on the rest day of the clerk's position."

In this Award the majority has seen fit to ignore the facts outlined above.

For the reasons outlined I dissent from an erroneous conclusion of the majority.

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member