

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 239
(Clerks' Board, St. Louis, Missouri)

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. Carrier violated the Clerks' Agreement when, at the close of tour of duty on April 19, 1958, it abolished the position of General Clerk in the Division Trainmaster's office, Union Station, Little Rock, Arkansas, and effective Sunday, April 20, 1958, it removed a portion of the clerical work attaching to this position from the scope and operation of the Clerks' Agreement and assigned it to an employe of another craft and class, that of Assistant Chief Dispatcher, who is covered by another agreement, in violation of the provisions of Rules 1, 2, 3, 5 and 25, and other related rules of the Clerks' Agreement.
2. The Carrier shall be required to compensate Clerk James W. Belts for four hours at the punitive rate of \$3.6225 per hour, or \$14.49 per day for April 20, 21, 22, 23, 24, 25 and 26, 1958, amount \$101.43, and for each subsequent work week, Tuesday through Saturday, until violation of Agreement is discontinued.

OPINION OF BOARD:

Effective at the close of business Saturday, April 19, 1958, the seven day position of General Clerk which is here the subject of dispute was abolished. The position had been in effect for about twenty years. The principal duties of that position were:

1. Make report of location and movement of passenger and freight trains, this information to be taken from train sheets, and give this information to the St. Louis office at 9:30 PM each day by telephone.
2. Post figures covering local loading, and receipts from connections, this information secured from X-23 reports.
3. Compile 3358 report, requiring approximately two hours daily.
4. Make report of location and movement of passenger and freight trains; this information to be taken from train sheets and given to the St. Louis Office, 4:30 AM and again at 5:00 AM, by telephone.

5. Type 5:00 AM report, consisting of approximately three pages, and this information given to interested officers (such as Division Superintendent and his staff).

6. It is necessary to post the record of the location and movement of passenger and freight trains throughout the night, showing delays.

The duties described in Items 2 and 3 above were transferred and assigned to another General Clerk position effective Sunday, April 20, 1958. Prior thereto that position was worked Tuesday through Saturday, 9:00 AM to 6:00 PM, rest days Sunday and Monday. The position was changed from a six day to a seven day assignment with the same assigned work days and rest days, but the assigned hours were changed 11:00 AM to 8:00 PM, meal period 3:00 PM to 4:00 PM.

The remaining duties on the abolished position were transferred to the Assistant Chief Dispatcher position in the same office. The Assistant Chief Dispatcher position is not covered by the scope rule of the Clerks' Agreement.

This is another disputed claim that Carrier has removed work from the scope and operation of the Clerks' Agreement and has given it to another craft and class of employees over the protest of those who assert an exclusive right to the work in the exercise of seniority and by reason of the contract's coverage.

In this, as in those other disputes that already have claimed this Board's attention involving the scope of work that has been let by contract, the parties cannot agree upon the meaning and application of N. R. A. B. (Third Division) Awards that are cited and relied upon in great numbers in this and the other dockets. The broad sweeping principles enunciated by those Awards have been given great prominence in all the submissions. As with any body of law, the litigants generally can find precedent to sustain their position in principle. In the end, however, the facts are controlling.

The Carrier relies upon that line of Awards which holds a Carrier has the right to abolish positions included in Agreements when there no longer is work to be performed on those positions. The Carrier also finds comfort in the "ebb and flow" doctrine which is to say, where there has been a substantial decline in work it should flow back to its original source.

The Employees argue for those principles found in Board Awards which make it a violation of contract for a Carrier to arbitrarily take work out from under the scope of an Agreement. Work embraced within the scope of an Agreement may not properly be removed from such Agreement and assigned to employees not subject to its terms. For Carriers to enjoy such a prerogative would be destructive of the Agreement. There are many Awards that so hold and the Employees think those Awards should be controlling of a decision in this case.

On the theory that the pieces of work transferred to the Assistant Chief Dispatcher position requires about four hours daily for performance, claim is made accordingly.

There is substantial evidence in this docket upon which to base a finding that clerical positions were established in times past to assist with work that is peculiar to the Dispatcher craft. There is no need to labor the point that the location and movement of trains over the line of road is work which concerns Dispatchers. The reports, having to do with the Dispatcher's principal duties, are peculiar to that position. When the volume of that work reaches proportions that the Dispatcher does not have time for the clerical detail, it is only natural that Clerks would fall heir to the overflow without giving them an exclusive claim to work that is incidental to a position not covered by their Agreement.

Additionally, we see evidence that the Carrier recognizes the sanctity there is in any Agreement when it removed only that work from the scope of the Clerks' Agreement which clearly is inherent in and attaches to the Dispatcher craft.

FINDINGS:

The Board, after oral hearing, and upon the record and all the evidence, finds and holds:

That the Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as amended;

That jurisdiction over the dispute involved herein has been conferred upon this Board by special agreement; and,

That the Agreement by and between the parties to this dispute has not been violated.

AWARD

Claim denied by order of:

Special Board of Adjustment No. 239

/s/ A. Langley Coffey
A. Langley Coffey, Chairman

/s/ F. E. Griesse
F. E. Griesse, Employer Member

/s/ Ira F. Thomas
Ira F. Thomas, Employe Member

Dated at St. Louis, Missouri,
this 30th day of June, 1959.