

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

PARTIES TO DISPUTE:

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

and

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. Carrier violated the Clerks' Agreement when, effective at the close of business on Friday, January 16, 1959, it nominally abolished the position of Cashier and Check Clerk at Russellville, Arkansas, and effective Monday, January 19, 1959, it removed the clerical work that the Cashier and the Check Clerk had been performing exclusively from under the scope and operation of the Clerks' Agreement by requiring employes of the Carrier and employes of the Missouri Pacific Freight Transport Company, both of which are outside of the scope of the Clerks' Agreement to perform the work, which was in violation of Scope Rule 1, Rules 2, 3 and related rules of the Clerks' Agreement.
2. The Carrier be required to reestablish the Cashier and Check Clerk positions at Russellville, Arkansas and place the clerical work at that station back under the scope and operation of the Clerks' Agreement.
- 3 (a). The Carrier shall pay Clerk W. E. Greer, sixty cents for January 19, 1959, the difference between the Cashier rate of \$19.38 at Russellville, Arkansas, and the Bill Clerk rate of \$18.78 at Morrilton, Arkansas, to which Clerk Greer exercised his seniority after his former position of Cashier at Russellville was abolished, claims to continue to accumulate and accrue until the violation is corrected.
- (b). The Carrier shall pay Clerk C. C. Childers a pro rata day's pay of \$18.30 for January 19, 1959, the rate of the Check Clerk position at Russellville, Arkansas, account this day lost by Clerk Childers in moving from one position to another, and required to break in on position of Check Clerk at Fort Smith, Arkansas, and twelve cents per day for the difference in the rate of Check Clerk position at Russellville, \$18.30 and the Check Clerk position at Fort Smith, Arkansas, \$18.18, to which position he exercised his seniority when his former position of Check Clerk at Russellville was abolished on January 16, 1959, claims to continue to accumulate and accrue until violation is corrected.

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- (c). The Carrier shall pay Clerk T. O. Hendricks a pro rata day's pay at the rate of the Bill Clerk position at Morrilton, Arkansas, \$18.78 for January 19, 1959, account Clerk Hendricks lost that day when he was displaced from that position and in turn exercised his seniority to the position of Ticket Clerk, rate \$18.78, at Fort Smith, Arkansas.

OPINION OF BOARD:

Russellville, Arkansas, is a way station on the main line about 75 miles northwest of Little Rock. The last clerical positions, Cashier and Check Clerk, were abolished at that location on January 16, 1959. Claimants W. E. Greer and C. C. Childers were the incumbents at the time.

The dispute is over the scope of work under the Agreement with Clerks. Rules 1, 2, 3, 5, Scope, Classifications, Seniority, Seniority Districts and Rosters, in that order, are put in issue by the submissions.

The Employees contend there is work remaining that is subject to their Agreement with Carrier, and now being performed by persons upon whom the Agreement confers no rights. The Employees hold this to be a violation of Scope Rule 1 of said Agreement.

Carrier disputes the Employees' claim that the Agreement with its Clerks was violated when it rearranged its station forces at Russellville so as to assign the remaining clerical duties to Telegraphers in order to give said Telegraphers a full complement of work to sustain those positions for an eight-hour tour of duty.

Carrier reasons that its position must be the correct one because, in the instant case, there were train order and telegraphic duties to be performed on each eight-hour tour of duty; and, under those conditions, the Telegrapher positions must be retained when forces are reduced, on account of views expressed in awards of the Third Division, National Railroad Adjustment Board, to the effect, so Carrier contends, that Clerks cannot be assigned telegraphic duties, but Telegraphers may be assigned clerical duties to fill out a tour of duty.

The Employees challenge Carrier's views with respect to what the Adjustment Board's awards do hold in such cases as the instant one. Russellville is not to be classed with the one-man stations which the Employees say are so frequently referred to in Board awards for applying the "flow and ebb" doctrine.

The strength of the Employees' case before this Board lies in the undisputed facts that the remaining station force at Russellville, after reduction, consisted of an Agent, and three Telegraphers. Hence, four positions remained. None was kept on under the Clerks' Agreement. The Agent qualifies to perform telegraphic work under that Agreement. Prior to the abolishment of the two clerical positions, he covered the telegraphic duties on the first trick. In connection with the force reduction, the telegraphic work was removed from his position, and a first trick Telegrapher position was created to take over those duties.

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According to other undisputed evidence, about twelve hours' clerical work in the aggregate, remains. There are about two hours of train order and other telegraphic work on each of the first and second tricks, "practically none" on the third trick. To cover all the work, the station force now consists of an Agent, a first trick Telegrapher, a second trick Telegrapher, and a swing Telegrapher. The Agent has no assigned hours. The swing Telegrapher works "various" hours. The first and second trick Telegraphers work assigned hours that afford continuous coverage from 6:00 A.M. to 10:00 P.M.

Our first impression, based upon the foregoing facts, was that a force reduction clearly was in order, but it did appear that the tail was wagging the dog. The preponderance of the work that remains is clerical. There is not enough train order and other telegraphic work, in the aggregate, to sustain one Telegrapher position.

But, according to Carrier, the self-evident need to reduce forces is surrounded by the further need to distribute the work in keeping with service requirements that must be met over a 24-hour period, by two Telegraphers, with assigned hours, and a third for relief outside the assigned hours of the other two. Carrier is further able to justify the need of an Agent at an agency station.

We have found little of real value in the many awards cited and examined. Most are distinguishable on rules or facts.

The leading authority in disputes involving a conflict between the scope of the Clerks' Agreement and that of the Telegraphers' is Third Division, N.R.A.B. Award No. 615, the late Frank M. Swacker, Referee, assisting. While we question whether that award is as far reaching as the use to which it has been put in other disputes would indicate, said award does have a peculiar impact upon this dispute, as a careful reading of same and what is later said herein will show.

After a careful study of the written submissions and awards, but before hearing, we leaned in favor of the Employees' position in this docket. It bothered us that we have here a case of work being taken from under one Agreement and placed under another, without conference and agreement. The Employees holding the favored Agreement were pleased to have the work, so far as we know, in order to sustain positions that otherwise would be in jeopardy, but the Employees holding the Agreement from which the work had been removed look with disfavor upon the move. It proved particularly troublesome to us that a new position (first trick Telegrapher) was created to assume duties that had been covered satisfactorily by the Agent-Telegrapher.

On the other hand, we were not impressed from the outset that Clerks at the given location had the exclusive right to perform all non-telegraphic duties, in view of the showing made in the written submissions that Telegraphers had done some clerical work such as selling tickets and giving telephone information about passenger service.

We approached the hearing in the unsettled state of mind, before mentioned, to be told by responsible Carrier officers that Award No. 615, supra, always had been their "Bible" and has been religiously followed on this property down through the years to the present, without serious protest. The representation was not seriously challenged but we asked, nevertheless, for concrete evidence. Among other files produced, was one covering reduction of forces at Dexter, Missouri, in 1945. We also learned that, at Garnett, Kansas, in 1949,

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an additional Telegrapher position was created and established on the first trick to take over the Telegraphic work formerly performed by an Agent-Telegrapher, in connection with a force reduction. Among other passages found in Award 615, supra, are the following:

"It has always been the rule that telegraphers may be assigned clerical work without limit except their capacity to fill out their time when not occupied with telegraphy."

The above is followed by the sentence:

"For obvious reasons in diminution of force, a clerk cannot undertake or be accorded telegrapher's duties but the converse is not true; on the contrary, where two positions are involved, one, that of a clerk, and the other, that of a telegrapher, and one is to be abolished, the telegrapher - if any telegraph duties remain - has the absolute right to the position including the assumption of the remaining clerical duties."

The Referee next said, among other observations, that:

"Considerable point is made in this case of the fact that over seven and one-half hours of the incumbent's time are devoted to clerical duties and only one-half hour to telegraphic duties; stated thus it might be inferred that the one-half hour of telegraphic duties is confined to that much elapsed time. There is no warrant however for that inference and the probabilities are that the telegraphic duties are scattered throughout the shift. It is this necessity which dictates the assignment of the position to a telegrapher."

The opinion concludes as follows:

"If joint conferences between the carrier and the two organizations involved are held when such changes are contemplated, they should operate to reduce the number of disputes of this character."

While we subscribe ^{heartily} to what is said last above, the parties to these disputes, on this, and other properties, for reasons best known to them, have not yet found conference and agreement the practical approach for settlement of their problems. Therefore, Award 615, supra, while not always controlling, is authority on this property for settlement of this character of dispute until the parties work out some other method for resolving their recurring differences over force reductions.

The Employes' objections to handling of the L.C.L. freight by Missouri Pacific Freight Transport Company employes is fully covered by this Board's denial Award No. 24 and we do not find anything in this submission to differentiate between the two dockets.

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FINDINGS:

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

That the Carrier and the Employees involved in this dispute are ~~respective~~ respectively Carrier and Employees 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 was not violated.

AWARD

Claims denied.

SPECIAL BOARD OF ADJUSTMENT NO. 239

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

/s/ G. W. Johnson
Employer Member

/s/ Frank D. Lupton
Employees' Member

Dated at St. Louis, Missouri
this 15th day of December 1961

File 205-3226