NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM.—

"Claim of Yard Clerks, East St. Louis, Ill., for restoration of established working condition and practice of being afforded two relief days per month with pay retroactive to June 1, 1935."

STATEMENT OF FACTS.—In their ex parte submission the employes stated the facts as follows:

"As a result of request filed by Yard Clerks employed in the East St. Louis, Ill., yards during the year 1916 for wage increases and vacation privileges, an understanding was reached through which a wage increase was granted and a working condition or practice was established granting such yard clerks two days relief each month with pay. The establishment of this working condition necessitated the employment of a Relief Clerk to relieve each yard clerk two days per month. After seniority rules were established in working agreements, such relief position was regularly bulletined and assigned in accordance therewith.

"This working condition or practice of clerks being afforded two relief days per month with pay was continued in effect since 1916, until June 1, 1935."

Under date of April 22, 1935 the carrier notified the Brotherhood by letter to the effect that the affording of yard clerks two days off per month with pay was at variance with the provisions of the Clerks' agreement and should have been discontinued some time ago. Also that this would be corrected May 31, 1935.

"Since June 1, 1935, the Carrier has failed and refused to continue in effect the working condition of two relief days with pay per month for such employees.

"The working condition hereinbefore described has continued in effect throughout and under all of the following stated agreements between the Carrier and the Brotherhood:

"1. Agreement of February 11, 1918.

"2. Agreement of January 1, 1920, between the Director General of Railroads and the Brotherhood.

"3. Agreement of June 1, 1921, including Supplements 1 and 2 thereof.

"4. Agreement of July 15, 1924.

"5. Agreement of September 1, 1926."

There is in evidence an agreement between the parties bearing effective date of September 1, 1926, and the following rules are cited:

RULE 3

"This agreement becomes effective September 1, 1926, and supersedes and cancels all former agreements but does not, unless rules are specifically changed, alter practice or working conditions established by or under former agreements.

"Termination:

"This agreement to remain in effect until September 1, 1928, and thereafter subject to thirty (30) days' written notice from either party to the

"The employes contend the carrier on June 1, 1935, violated Rule 3 and Article 14 of the current agreement when it cancelled the established practice and working condition herein described; and that the carrier should now be required to restore said working condition, and should further be required to compensate the regularly assigned employes for the two days' pay each month retroactive to June 1, 1935, and also should be required to compensate the Relief Clerk for all wage losses arising out of the cancellation of such working condition."

POSITION OF CARRIER.—

"Employees' contention that the employment of a relief yard clerk at East St. Louis for the purpose of affording yard clerks at that point two days' relief per month with pay was the result of an understanding reached in connection with a request of the employees in question for increased wages and vacation privileges is not supported by the facts;

"No provision of any clerks' agreement in effect on Southern Railway subsequent to the year 1916 required that the arrangement be continued in effect; and,

"The discontinuance of the arrangement was not in violation of either Rule 3 or Article 14 of clerks' current agreement dated September 1, 1926."

OPINION OF BOARD.—In this claim of the yard clerks at East St. Louis, Illinois, for a restoration of the practice of being afforded two relief days per month with pay, retroactive to June 1, 1935, the employes base their contention on the application of Rule 3 of the existing agreement effective September 1, 1935, and claim that the action of the carrier in cancelling the practice and working conditions in effect up to May 31, 1935, was in violation of Rule 3 and Article 14 of the agreement.

The carrier contends that early in 1917 when the two days relief per month were granted to the limited number of yard clerks at East St. Louis, no agreement existed between these or other clerical employes and the carrier, and that the first agreement between the carrier and its clerical employes was dated February 11, 1918, and contained no provisions continuing in effect the arrangement of affording the yard clerks at East St. Louis relief days with pay.

The carrier further calls attention to the so-called National Agreement effective January 1, 1920, superseding the agreement of February 11, 1918, together with other agreements between the clerical employes and the carriers and which superseded and cancelled all previous agreements up to the ratification of the existing agreement effective September 1, 1926, and none of which contained any specific provisions for relief days for the limited group of yard clerks at East St. Louis or elsewhere on the carrier's system.

While there is some disparity in the record as to the date of the month in 1917 when the conditions occurred leading up to the granting of increased compensation and of two days relief per month with pay to the yard clerks at East St. Louis, these have been conceded by the parties as immaterial to the issue involved. The fact however is evidenced that following the conditions specified, or as a means of adjusting the controversy between the employes and the carrier during January 1917, an agreement was made not only to increase the wages of the limited number of employes affected, but to as well grant such employes two days relief per month with pay as an additional part or condition of that agreement. It is apparent however that whatever agreement was made was an oral one, and while the increase in pay undoubtedly became effective immediately upon the settlement of the grievance of the employes, the relief days were not inaugurated until some weeks after the grievance had been settled; and the carrier has questioned as to whether or not the relief days were granted as a part of the conditions upon which a settlemennt was made.

The fact that the relief days with pay were put in effect by the carrier and particularly the undisputed statement contained in a certified copy of an article submitted from the East St. Louis Journal of January 18, 1917, to the effect that relief days were a part of the settlement of the employes grievance, constitute in the opinion of the Board convincing evidence that, regardless of the few weeks that elapsed before that part of the settlement of the grievance was put in effect or ratified, the relief days were a definite part of the agreement of the carrier with the employes and established through conference and agreement a practice and working condition for the employes affected, of equal value and importance to subsequent written and certified agreements.

It is the further opinion of the Board that inasmuch as the granting of relief days with pay established a practice and working condition in 1917 which for 18

years has been recognized and observed by the carrier, and that such additional employment as was created through such recognition and observance has been regularly bulletined, the practice and working conditions established under such agreement cannot be altered without violation of Rule 3 of the existing agreement.

Insofar as the application of Article 14 of the current agreement to the instant case is concerned the Board submits that the "Termination" rule or clause of the agreement applies to the agreement as a whole and not to any single or specific rule of the agreement, and the 30 day notice required in that rule to terminate the agreement is not applicable to the instant case.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the facts of record sustain the position of the employes.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 16th day of September, 1937.