

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

**PARTIES TO DISPUTE:**

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

**FLORIDA EAST COAST RAILWAY,**

**W. R. Kenan, Jr., and S. M. Loftin, Receivers**

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

"The Carrier violated the rules of the Clerks' Agreement, as hereinafter stipulated, by assigning clerical position of Diagram Clerk at Miami, Florida, intermittent hours; also claim that the employe affected by said violation of rules be compensated for three hours overtime daily, at punitive rate, from December 16 to 31, inclusive, 1938, resulting from carrier's action in making an improper assignment."

**EMPLOYEES' STATEMENT OF FACTS:** "On November 21st, 1938, position of Diagram Clerk at Miami was advertised by Assistant General Passenger Agent, to be in effect December 16th to 31st, inclusive, with assigned hours as follows:

	10:15 A.M. to 1:15 P.M.
	5:15 P.M. to 10:15 P.M.
Meal Period—	1:15 P.M. to 2:15 P.M.
Off Duty—	2:15 P.M. to 5:15 P.M.

"In advertising this assignment, the duties were made to appear as intermittent, but, as a matter of fact, the duties of diagram clerk continued to exist during the period of release (2:15 P.M. to 5:15 P.M.) and were performed by the incumbent of the position of City Ticket Agent."

**CARRIER'S STATEMENT OF FACTS:** "1. At Miami, Florida the office of the Assistant General Passenger Agent is located in the downtown area and the City Ticket Office is under his jurisdiction. The City Passenger Agent is a member of his staff and as a normal part of his regular duties the City Passenger Agent handles the distribution of Pullman space to patrons and other ticket offices along the line on Pullman diagrams.

"2. Between the middle of December and the middle of May the volume of passenger traffic in and out of Miami and nearby towns is multiplied several times by winter tourist travel. The Railway increases its train service each year in December and further increases it in January, to accommodate the extra travel, then withdraws the additional train service commencing in April and ending during the early part of May. As the travel commences to increase about the middle of December, the handling of some of the details of the Pullman diagrams, in addition to his other duties, necessitates giving the City Passenger Agent some assistance, therefore, his office is transferred from the City Ticket Office downtown to a vacant

hours of the day, but the assigned hours of the clerical force do not coincide with the hours observed by the agent or yardmaster, who may be in his office and performing his duties both before and after the assigned working periods of the clerical force, or during the hours intervening between two shifts of a clerical force. The City Passenger Agent did not require the continuous service of the diagram clerk between December 16 and 31, and he was, therefore, assigned to work the hours each day that his services were required.

"3. It is the position of the Railway that the claim of the Brotherhood is not substantiated by Rule 39, and that it should be denied."

There is in evidence an agreement between the parties bearing effective date of January 1, 1938.

**OPINION OF BOARD:** The question for determination by the Board in this case is whether service was intermittent on the position in question from December 16 to 31, 1938, inclusive; and if it is permissible, under Rule 39, to assign the position involved on a split trick basis. Evidence of record shows that during the period of release of the Diagram Clerk, his class of duties were performed by the City Ticket Agent. Based on the above facts, assignment of Diagram Clerk on intermittent service basis was not permissible under Rule 39.

This is not to be construed as infringing upon the right of the City Ticket Agent to continue in the performance of the duties of his office, including the handling of the diagrams during the period of the year that clerical assistance is not required.

The record indicates that on four (4) days of the period involved, viz., December 28, 29, 30 and 31, the position in question was worked and paid on continuous service basis, under the provisions of Rules 38 and 45. If this be a fact, the occupant of the position was correctly compensated on those days.

The claim, therefore, should be sustained, subject to the findings set forth above.

**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 employees involved in this dispute are respectively carrier and employees 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 claim is sustained for such days the incumbent of the position of Diagram Clerk was not compensated as on a continuous service basis, exclusive of the meal period, December 16 to 31, 1938, inclusive.

#### AWARD

Claim sustained to extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1940.