

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

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 has violated and is continuing to violate the Clerks' Agreement by assigning clerical work to an employe not covered by that agreement, and further failing and refusing to assign such work to employes holding seniority rights thereto under the Clerks' Agreement; that such clerical work shall be restored to the scope of the Clerks' Agreement and assigned to employes, in accordance with the rules thereof; also claim that the employes involved in or affected by said violation be compensated in full for any monetary loss resulting from the Carrier's action, retroactive to June 23, 1938."

EMPLOYES' STATEMENT OF FACTS: "Prior to June 23, 1938, there was in existence at Miami Freight Agency a temporary position of clerk in Cashier's office, and a permanent position of clerk to Accountant, designated as position No. 15. Duties of the latter position consisted of preparing corrections to waybills, typing drayage allowance drafts and other drafts, stamping date paid against freight bill numbers on pro sheets from cash sheets sent up from Cashier's office, preparation of monthly reports to Auditor and Auditor of Freight Accounts, matching files, assisting in expensing freight bills and making abstracts, all consuming eight hours' time.

"On June 23, 1938, Cashier's office abolished position of clerk, assigned hours 9:00 A. M. to 6:00 P. M., and subsequently consolidated the duties of this position with those of permanent position No. 15, changing the assigned hours of the latter position to conform to assignment of the abolished position.

"Clerical position in Cashier's office consumed eight hours daily, except Sunday. Incumbent of position No. 15 was unable to perform duties of both positions, and was transferred to Cashier's office. Duties formerly performed on position were distributed—preparation of freight bills and abstracts among clerks, other duties to the Accountant, who holds an excepted position. Position in Cashier's office, although carried on temporary basis, has been in existence continuously for about two years. Position No. 15 has been in existence since prior to October 1, 1936, at which time it was assigned by bulletin in accordance with the then existing Clerks' Agreement."

CARRIER'S STATEMENT OF FACTS: "1. The current agreement between the Railway and the Brotherhood of Railway and Steamship Clerks became effective January 1, 1938. Under Rule 1 of that agreement it is provided that the rules of the agreement shall not apply to specified positions

change, there are being filed herewith as Carrier's Exhibit 'H,' consisting of five sheets, photostatic copies of corrections personally prepared and issued by the Accountant on various dates during the year 1933, the total for the year being approximately 550, and as Carrier's Exhibit 'I' there are being filed photostatic copies of the stubs of several station drafts personally prepared by the Accountant on dates selected at random, during the year 1933, the average number of drafts prepared and issued by him per month, being about 60.

"6. It is the position of the carrier that there has been no violation of the agreement and that the Brotherhood is seeking to extend the scope of the agreement through endeavoring to have transferred to employes within the scope of the agreement, work properly belonging to an excepted position. The claim should be denied."

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

OPINION OF BOARD: The claim, the pertinent rules of the agreement, citation and digest of awards, and the contentions of the parties, are set out above.

Briefly, three positions enter into the controversy, designated as follows: Accountant, without, and 15 and 2287, within, the scope of the agreement. On a given date the carrier discontinued position 2287, and assigned the duties attaching thereto to position 15. That the occupant of the latter position might perform the duties thus assigned to him, some of the duties which regularly attached to his position were assigned to the Accountant. The result was that work within the scope of the agreement, and theretofore performed by employes within such scope, was assigned to an employe not within the agreement. We think the action of the carrier was violative of the terms of the agreement, a conclusion well supported by earlier awards, many of which are cited and sufficiently reviewed in the formal statement preceding this opinion.

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 carrier violated the current agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of December, 1940.