

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the position of Car Distributor at Palestine, Texas, is covered by the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: There are three Car Distributor positions on this railroad. Two of those positions have been acknowledged by the carrier to be covered by the Clerks' Agreement for many years, but the carrier refuses to recognize that the position at Palestine, Texas is covered by the Clerks' Agreement, although it performs the same work as do the other two.

The Assistant General Manager made a check, on a minute basis, of the work performed by the Car Distributor at Palestine, from November 1, 1939 to November 18, 1939, which disclosed that an average of seven hours and twenty-seven minutes each day was spent in the performance of clerical work.

POSITION OF EMPLOYEES: The employees quote the following rule in support of their position:

Rule 1.

"(a) These rules shall govern the hours of service and working conditions of all of the following class of employees of the above named railroads and subsidiary companies now in existence or hereafter organized.

"Group 1. Clerks, Machine Operators, such as typewriters, adding and calculating machines, bookkeeping, accounting, timekeeping and statistical machines, dictaphones, key-punch, teletype (except teletype used exclusively in the transmission of messages and reports and located in offices which are equipped with telegraph facilities), and all other similar equipment used in the performance of clerical work or in lieu of clerical work.

"Group 2. All other office, station and store employees including office boys, messengers, train announcers, gatemen, baggage and parcel

OPINION OF BOARD: Claim in this case is based upon a division or apportionment of the amount of time spent by the incumbent in duties which are said to be clerical as compared with those spent by him as a telegrapher using Morse transmission, and also upon an interpretation of the rules as to Scope of the agreement and definition of its terms. It is argued that the position of car distributor at Kingsville and DeQuincy are recognized by the parties as coming under the Clerks' Agreement and that those positions are similar to this one; that therefore this position at Palestine must also be under that agreement.

It is admitted the work which is said to be clerical in nature consumes at least seven hours of each working day of the employe and that something less than one hour per day on an average is required of him in the transmission of messages by telegraph in Morse code. It is not contended that the position is clearly and definitely under the Clerks' Agreement but that it must be so is a reasonable inference and interpretation of the rules. It is clear that the position is not specifically covered by the agreement nor by any other agreement called to our attention.

An interpretation which parties have made for themselves and by their own conduct placed upon their own agreement has great weight and is frequently controlling in the decision of controversies which arise between them. If the positions at Kingsville and DeQuincy are identical with the one at Palestine this one point might very easily be decisive. The record shows however that in the Palestine case, which we are considering, the car distributor handles territories and business which require the use of a telegraph instrument and the ability to transmit and receive in Morse code. This is not true of the positions at Kingsville and DeQuincy, and the distinction is such as to preclude any application of the ordinary rule as to interpretation by the parties.

It is clear from this record and on oral presentation was made quite certain to the referee that the duties of a car distributor are materially different from those of an ordinary clerk. The demands for cars from different stations and industries come to the office of the car distributor who has the duty and responsibility of determining what cars are available, where they are located and, if the number available is less than the demand to apportion their distribution and determine where each car is to be sent. It is of course true that records must be kept of all these transactions, and the car distributor must spend a considerable portion of each day in keeping these records. It may also be said that the keeping of these records is clerical work, but only in the sense that it is putting words, letters and figures in appropriate places. It does not follow that the duties of this employe are merely clerical or that he is a clerk. Taking into consideration his discretionary power and duty to properly distribute and apportion the distribution of cars, his duties are clearly those of a junior executive. In the ordinary understanding of common speech a clerk is one who writes what another tells him, while an executive is one who tells someone else what to write. This employe is thus both a clerk and executive, because, although he actually does the writing he also determines what is to be written and the causes therefor and assumes responsibility for his acts.

Rule 1 of the Agreement is made specifically to apply to "Clerks, Machine Operators, such as typewriters, adding and calculating machines, bookkeeping, accounting, timekeeping and statistical machines, dictaphones, key-punch, teletype (except teletypes used exclusively in the transmission of messages and reports located in offices which are equipped with telegraph facilities), and all other similar equipment used in the performance of clerical work or in lieu of clerical work." Rule 2 provides in substance that employees who are used three hours or more for the majority of the working days of the month in the compiling, writing, and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements and similar work * * * shall be designated as clerks. It is argued that because this employe uses more than three hours per day of his time in keeping records he must necessarily be designated as a clerk.

It is apparent that the application of such a rule as this one is likely to be extremely difficult in determining borderline cases and is also likely to be provocative of disputes and discords between different Brotherhoods having different rules, if there are any. It is probable that there are many employments in which an employe might be required to possess many different skills. It is unnecessary for the purposes of this case to go into a full discussion which might at some future time prove to be binding upon borderline cases. We do not think this is a borderline case but on the contrary are clearly of the opinion that the employe who holds this position is not merely a clerk and that he is not covered by the Clerks' Agreement. It is true that he must be skillful and diligent as a clerk, but it is also true that in order to hold this position at all he must also be a telegrapher, even if it be for only a few minutes of each day. A life guard may sit many days on his perch but he must be able to swim if necessary, and without that skill he cannot be a life guard. So it is with this man at Palestine, Texas. He must be a clerk, but unless he was also a telegrapher he could not hold this particular job.

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 employe involved in this dispute are respectively carrier and employe 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 position of car distributor at Palestine, Texas is not covered by the Clerks' Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of September, 1942.