Award No. 2089
Docket No. CL-1998

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim of the System Committee of the Brotherhood that the work of watching the Brewery Group warehouses at Newport News, Virginia be returned to the three positions of Watchman which prior to June 1, 1941 were held by Messrs. N. A. Smith, W. J. Padgett, and E. L. Flynn, at a rate of $175.20 per month each, and that Mr. E. L. Flynn, who was arbitrarily removed from one of the said positions and replaced with a Mr. J. B. Williamson, be returned to his former position and compensated for all wage loss sustained; and

(b) That the three positions of Watchman shall continue to be recognized as "excepted positions" under the terms of the Clerical Agreement in the same manner as they were prior to June 1, 1941.

EMPLOYES' STATEMENT OF FACTS: On the Newport News-Norfolk seniority district there is located a group of warehouses known as "the Brewery Group." These warehouses are owned by the Chesapeake and Ohio Railway Company and leased to the Hiden Storage and Forwarding Company. They are located directly on and adjacent to the main line tracks of the Railroad.

Prior to June 1, 1941 the Management maintained three positions of Watchman which were occupied by Messrs. N. A. Smith, W. J. Padgett and E. L. Flynn at rates of $175.20 per month each, the duties of these men being to patrol the yards and the Brewery Group warehouses, punching time clocks in the warehouses when going through same. These positions when negotiated into the Agreement November 16, 1936 were supposed to be rank and file jobs. As a result of the controversy over their status, the matter was submitted to your Board and Award No. 877, Docket CL-931 was rendered holding that they were excepted positions. Effective June 1, 1941 Mr. C. E. Grey, Special Agent, having supervision over all positions of Watchman in the Newport News-Norfolk District, instructed the three Watchmen whom the Carrier titled as Special Agents to discontinue their rounds in the Brewery Group warehouses, advising that this work had been turned over to the Hiden Storage and Forwarding Company. Mr. Grey also took Mr. Flynn off of his position of Watchman paying $175.20 and placed him on another position down on our Merchandise Piers paying $150.00 per month, and took one J. B. Williamson off of our Merchandise Piers who had been drawing $150.00 per month, and placed him on the position of Watchman but which was carried as Special Agent, formerly held by E. L. Flynn.

tions referred to the Chief Special Agent's letter of May 31, 1940, addressed to the General Chairman of the Clerks' Committee, listing the excepted positions at Newport News, which letter inadvertently included the three positions in question in the instant case.

Subsequent to your Board's Award No. 877, which denied the claim of the employes and sustained the Carrier's position that station and warehouse watchmen were excepted positions under the Clerks' Agreement, the General Chairman of the Clerks' Committee requested a list of the excepted positions (station and warehouse watchmen) in the Chief Special Agent's Department at Newport News, and the Chief Special Agent in replying to the General Chairman inadvertently included the three positions of Special Officer referred to in this case.

The employes also refer to the fact that under date of July 16, 1941, the Special Agent at Newport News issued a bulletin in accordance with Rule 1 (d) advising that positions of Watchmen at the Brewery group of warehouses were abolished June 1, 1941. As cited above, there was in fact no abolishment of any positions, and the Special Agent was in error in issuing such a bulletin. Furthermore, Rule 1 (d) refers to the abolishment of excepted positions, and as these positions were not excepted positions, but were positions beyond the scope of the Clerks' Agreement, even had they been abolished, no bulletin would have been necessary, so its issuance was of no effect.

Those errors on the part of the Chief Special Agent and Special Agent, however, cannot in any way be construed as affecting, altering, or extending the provisions of the Clerks' Agreement, which plainly specifies in the scope rule that station and warehouse watchmen and only these station and warehouse watchmen along with other clerical employes are excepted positions. (See your Award No. 877.)

The employes also claim that the fact that the Hiden Storage and Forwarding Company relieved the Railway Company of watching the Brewery Group of warehouses was a violation of the Clerks' Agreement. We are unable to follow the employes' line of reasoning in this claim. These warehouses were leased to the Hiden Storage and Forwarding Company, the watching consisted of five minutes work every one and one-half hours between 6:30 P. M. and 5:30 A. M. and was performed by Special Officers who are not covered by the Clerks' Agreement, or, in fact, by any agreement. Even if these particular Special Officers were excepted positions as claimed by the employes (and they are not), the employes in agreeing to except such positions from the scope of the Clerks' Agreement agreed that the Clerks' Agreement did not cover such positions. Furthermore, the scope of the Clerks' Agreement certainly could not, in any event, be construed as covering the watching of a building leased by the Railway to another company. In other words, the scope of the Clerks' Agreement could only apply to facilities operated by the Railway.

The attention of your Board is also directed to the fact that Flynn could have no claim for the difference between $175.20 and $150.00 per month while working as Watchman on the Merchandise Piers, for even if the positions of Special Officer were excepted positions as the employes claim (and they are not) the rules of the Clerks' Agreement pertaining to rates of pay, seniority and working conditions do not apply to excepted positions.

It is the Carrier's position that these positions are bona-fide Special Officer positions, and as such are not covered by the Clerks' Agreement. As cited above, the employes have heretofore in handling case covered by your Board's Award No. 877 agreed that Special Officers do not come under the scope of the Clerks' Agreement, and under the circumstances your Board could not properly do other than deny the employes' claim.

OPINION OF BOARD: At Newport News, the respondent owns three warehouses known as the "Brewery Group," which were leased by the Hiden

Storage and Forwarding Company. As a matter of convenience to the lessee, the respondent patrolled the building between the hours of 6:30 P. M. and 5:30 A. M. This patrolling consisted of punching a clock every hour and one-half during that time. Effective June 1, 1941, the Chief Special Agent having supervision over these three positions instructed the occupants to discontinue their rounds of the "Brewery Group" warehouses, advising that this work had been turned over to the Hiden Storage and Forwarding Company.

The petitioner contends that Rule 1 of the current agreement, in addition to covering the positions in question as so-called excepted positions, requires the Carrier to fill them from employes covered by the agreement; that the positions are in fact those of Watchmen, and when the Carrier turned over a part of the work of these Watchmen to the Hiden Storage and Forwarding Company, it violated the Scope, Promotion and Seniority Rules, and Section (e) of Rule 1, requiring the Carrier to fill such positions from employes covered by the agreement.

The Carrier contends the positions in question are bona fide Special Officer positions, that as such are not covered by the Clerks' Agreement, and cites Third Division Award No. 877 in support of such contentions.

If these employes were performing the duties of Watchmen, they were occupying so-called excepted positions, and would come within the provision of Rule 1 of the current agreement; but, if they performed the work of bona fide "Special Officers," they would not come within the provisions of the Clerks' Agreement.

The three men assigned to these positions patrolled and protected the entire Newport News Terminal, covering a distance of approximately 4.7 miles. Their work consisted of patrolling all yard tracks, meeting merchandise trains to protect shipments, and doing other work, including trips to Phoebus and Hampton to protect shipments to and from those points, as well as assisting in the handling of excursion travel to and from such points.

Their duties in connection with the warehouses in question consisted of punching a clock every hour and one-half between 6:30 P. M. and 5:30 A. M. Each round consumed about five minutes. There were numerous occasions when these employes were not available each hour and one-half. The employes assigned to the 7:00 A. M. to 3:00 P. M. trick did not perform any service or punch a clock in the "Brewery Group" of warehouses.

It is admitted the duties performed by J. B. Williamson when he was employed at the merchandise piers constituted a watchman's position. But his duties on this position consisted only in guarding the warehouse located at this point, and, of course, would come within the words "station and warehouse watchmen" as those words are used in Group 2 of the Scope Rule. It is readily seen that work performed at the merchandise piers is vastly different from the work performed by the three positions in question.

On May 31, 1940, in response to an inquiry of the General Chairman of the Organization, the Chief Special Agent wrote him a letter stating E. L. Flynn, N. A. Smith, and W. J. Padgett were watchmen covered in the Clerks' Agreement. The Chief Special Agent was not a party to the negotiations, nor was he a signatory thereto. While he is an official, he is not an executive official. He, therefore, lacked authority to place any binding interpretation upon the agreement. Award No. 244. At best, his letter would be only some evidence that these three positions were under the Clerks' Agreement, but it would not be conclusive evidence on this question.

Nor did the fact that for a period of time Williamson did hold one of the positions in question put it under the Clerks' Agreement. When he held this position, he was an employe of the Special Agent. Award No. 2010.

It follows that the claims should be denied.

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 there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.