

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the carrier (Terminal Railroad Association of St. Louis) violated the Clerks' Working Agreement when it transferred positions and work covered by the Agreement to an office excepted from the scope and application of the Agreement and that,

1. The Carrier be required to bulletin the positions for bid to the employees in the Eads and Merchants West Side Yard Clerks' District.
2. The senior qualified applicants be compensated for all wage losses suffered by the Carrier's failure to properly advertise these positions for bid at the time they were created, and,
3. All employees affected by the Carrier's failure to comply with the rules of the Clerks' Agreement be compensated for wage losses suffered.

EMPLOYES' STATEMENT OF FACTS: On July 22, 1942, there was created on this property a position, the duties of which consisted mainly of compiling information covering the movement of oil cars over the rails of the carrier. Mr. O. R. Moss, regular occupant of the second shift yard clerk position at 23rd Street, was assigned to the position. He was instructed to do his work in the main yard office at Madison, Illinois which office is located in a separate seniority district from the office at 23rd Street (St. Louis).

At the expiration of the 30 day period, the employees in the Madison District claimed the position as the work was being performed in that district. The Local Chairman requested the Agent to post the position for bid; he was informed by the Agent that the position was not under his jurisdiction and had been placed there by the General Superintendent. On September 9, 1942 General Chairman Dwyer wrote the General Superintendent requesting that the position be bulletined for bid to the employees in the Madison District. General Superintendent Davis never replied to this letter or request, but on September 11, 1942 the position was moved from the Madison Yard Office to the Traffic Manager's Office, Room 221 Union Station; some time later it was again moved into the General Superintendent and Superintendent's consolidated office, Room 203 Union Station.

In September, 1942 there was created another position the duties of which also consisted for the most part in compiling records covering the movement of oil cars over the rails of this carrier. Mr. W. F. Barclay, regular occupant of the first shift helpers position at the 23rd Street Yard office, was assigned to this position.

Clerks' contract, although all of the positions are presently excepted from the provisions of that agreement. Work in that office does not belong to yard-clerks or clerks in any other seniority district on the property.

The claim of the organization is definitely without merit from any standpoint and should be denied.

OPINION OF BOARD: In July 1942, the Office of Defense Transportation directed the Carrier to make a detailed record of the movement of loaded and empty oil tank cars over its rails and to make daily reports on prescribed forms. For approximately three months prior thereto, the Clerks in the Superintendent's office at St. Louis had been making such a record on the movement of loaded oil tank cars, which work they continued to perform for approximately two months thereafter without any increase of force. In order to comply with the directions of the Office of Defense Transportation with reference to records and reports on the movement of empty oil tank cars, the Carrier, on July 22, 1942, assigned O. R. Moss, the occupant of the second trick Yard Clerk position at the 23rd Street Yard in St. Louis, to perform the work of gathering the information and making the necessary records and reports. Moss was placed in the Agent's office at Madison Yard, East St. Louis, until September 11, 1942, at which time he was moved to the Traffic Manager's office, St. Louis Union Station. He was subsequently moved to the Superintendent's office and thereafter the records and reports on both loaded and empty oil tank cars were made in the Superintendent's office. It will be noted that the 23rd Street Yard was in a different seniority district than the Madison Yard where Moss was first placed on assuming the new position.

In September 1942, the Carrier assigned W. F. Barclay to the job of compiling the records and reports on the movement of loaded oil tank cars. Barclay was the regular occupant of the first shift helper's position at the 23rd Street Yard but was filling a temporary assignment in the Superintendent's office when the new assignment was given him.

It is the contention of the Clerks' Organization that the work being performed by Moss and Barclay is within the scope of the Clerks' Agreement and that the positions should have been bulletined in accordance therewith.

It is established by the record that the duties of these positions required the occupants thereof to record the movement of all oil tank cars from time of receipt by the carrier until delivered to the consignee or to the connecting road; to obtain the actual time of receipt and delivery by contacting various connecting line employees, by handling with Terminal Railroad Association dispatchers and yardmasters and from information furnished them by Yard Clerks in the various yard offices. Delays in the movement of tank cars are checked into by obtaining information from the interlocking tower and other records of the carrier. They handle Office of Defense Transportation diversions for the entire system and when their records are completed, they send their reports to the Office of Defense Transportation in Washington by air mail daily.

The Organization points out that the position assigned to Moss was first placed in the Madison Yard. While this is evidence to be considered in determining to whom the work belongs, it is not an absolutely controlling factor. The Carrier says that it was placed there because of lack of space in the Superintendent's office. We are inclined to think, however, that it was placed there by the Carrier because of a want of careful consideration of the question of where the work belonged. In the final analysis, it is the nature of the work and not the place of its performance which determines to whom it belongs. The Organization also points out that Moss examined local records in performing the duties of his position and that this was clearly yard clerks' work. It is evident that it was easier for Moss to do this personally when on the ground than to handle it by telephone, or otherwise, as he did with territory that was not easily reached. This was discontinued, however, when the position was placed in the Superintendent's office.

The Carrier points out that the work of the positions covered the whole system and was not confined to any one seniority district. The evidence sustains this assertion by the Carrier that the work was systemic in nature and involved a much greater field of activity than the position of yard clerk. It is also shown by the Carrier that as the yard clerk work increased, that new yard clerks' positions were established and bulletined. The Carrier asserts that three such new positions were established although the Organization argues that only two such were added.

It seems to us that irrespective of the poor handling of these positions on the part of the Carrier that they were properly assigned to the Superintendent's office and that they should have been so assigned in the first instance. Similar work was performed in the Superintendent's office prior to the establishment of these positions. Their work was systemic and involved the gathering of information that required the authority of the Superintendent to obtain. The filing of the reports with the Office of Defense Transportation was a duty imposed upon the Carrier as an entity, not upon each of several seniority districts. We are inclined to the view that the work was properly assigned to excepted positions in the Superintendent's office.

The Clerks' Organization points out that the excepted positions in the Superintendent's office were limited by the current agreement to the "entire force as now constituted," and that new positions cannot be properly added thereto. We think this proposition was properly decided adversely to the contentions of the Organization in Award 2423. While the facts in that case are not identical with the case before us, the principle is the same.

It is also urged that as Rule 2 (b) provides that upon the separation of the General Superintendent's and Superintendent's offices the former shall be excepted and the latter negotiated, and, that contingency having occurred with negotiations incomplete, positions in the Superintendent's office are therefore non-excepted. We do not concur in this view. Positions are not within the agreement until they have been placed there by negotiation irrespective of the breach of an agreement to negotiate. What the remedy may be for the breach of an agreement to negotiate, we are not called upon here to decide.

After a careful investigation of the whole record, it is our opinion that the positions to which Moss and Barclay were assigned properly belong in the Superintendent's office and that they are therefore excepted positions under the current agreement. Consequently no basis for an affirmative award exists.

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 record shows no violation of the current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of November, 1944.