

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILWAY

L. R. Powell, Jr., and Henry W. Anderson, Receivers

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

1. That the Carrier violated and continues to violate the Clerks' Agreement at Americus, Georgia, when on April 13, 1945, it removed the duties of calling crews by telephone out from under the scope and operation of the Clerks' Agreement and assigned such work to an employe of another class and craft; and
2. That Clerk Dorminy shall be paid a call for each night the crews were called by phone by an employe of another class and craft as stipulated in Exhibit "A".

EMPLOYEES' STATEMENT OF FACTS: The following clerks are employed at Americus, Georgia: Clerk with assigned hours 9 A. M. to 6 P. M., and a night clerk with assigned hours 1 A. M. to 9 A. M., leaving no clerk on duty between the hours of 6 P. M. and 1 P. M.

For many years Clerk Perry who was assigned 9 A. M. to 6 P. M. was paid a call to call all crews of the trains running between 6 P. M. and 1 A. M., when no clerk was on duty, until he was promoted to another position. Since that date Clerk Dorminy, with assigned hours of 1 A. M. to 9 A. M. was also paid a call to call crews between 6 P. M. and 1 A. M., when no clerk was on duty, until April 13, 1945, at which time the Carrier issued instructions to the Operator, who is not covered by the Clerks' Agreement, to call all crews that have a phone, and in the case of those not having a phone he was to call Clerk Dorminy and have her go after them, paying Clerk Dorminy a call for such services. Since April 13, 1945, the Operator calls all crews that can be reached over the phone. The Clerk is called by the Operator to go after the crews who have no phone.

We submit as Exhibit "B" our letter of May 23, 1945, protesting the action of the Carrier, and as Exhibit "C" Sup't. Gold's reply dated June 13, 1945.

POSITION OF EMPLOYEES: There is in evidence an agreement between the parties bearing effective date of October 16, 1922, and August 1, 1945, and the following rules of the prior agreement controlling this case read:

and telegraphers to perform clerical duties and such performance is not in violation of any of the agreements between the parties."

In closing we wish to point out one other matter involved in this claim. The employes contend that whenever it becomes necessary to call a train crew, the operator on duty should call the clerk to perform this service. By the same token that the Clerks claim this portion of the calling work, then, why should they not also be entitled to a call account of the operator calling the clerk.

For the above reasons the carrier respectfully requests that the claim be denied.

OPINION OF BOARD: The facts are not in dispute. At Americus, Georgia, a district terminal, the work of calling crews has been done at least since 1922 by employes covered by the Clerks' Agreement. For sometime a Clerk with hours 9:00 A. M. to 6:00 P. M. was paid a call to call all crews between 6:00 P. M. and 1:00 A. M. during which time no Clerk was on duty. Later on, Claimant with hours 1:00 A. M. to 9:00 A. M. was paid a call to call crews during such period preceding her assigned hours. Then Carrier changed that arrangement by having an operator during such period call such crews as could be reached by telephone, the others not available by telephone to be called by a Clerk as before. Thereupon this claim ensued.

Petitioner's position is that Carrier violated the Agreement by removing part of such work of calling crews from under the scope and operation of its Agreement by assigning some of the work of crew calling to an operator not covered by the Agreement.

If Carrier thus violated the Agreement the claim must be sustained.

Carrier contends it has the right to have the Operator during his regular tour of duty call crews over the telephone. It relies chiefly on Awards 615, 1868 and 2587 on the assumption this work is not exclusively the Clerks' but can also be properly assigned to the Telegraphers.

Award 615 first points out the "schedules" do not constitute a contract of employment but the contract of employment with an Organization is implied, and operates in conjunction with the schedules. However, it is important to note that the Award states such implied contract "must be deemed to embrace all of the field involved" with the exception of such work as has been expressly excluded by the Scope Rule or has been excluded by implication arising from the conditions surrounding the making of the Agreement. It then deals with the latter exclusion, and rules the Clerks are not entitled to the sole right to perform clerical work "consisting in that which has been and still is recognized as permissible and requireable to be performed by telegraphers".

Award 1868 follows the ruling just mentioned in basing its decision "on the historic right of Agents and Telegraphers to perform clerical duties."

Award 2587 merely recognizes the so-called "historic right", and, in effect, finds it was not involved in that case, and sustains the Clerks' claim to the work which was the subject of that dispute.

These Awards, as we presently point out, do not fit the situation we have here. Nor can the work of calling crews now be held to be incidental and normal to the position of Operator so that, in the language of Award 1314, it should "ebb back directly" to that position.

There are a number of other awards which deal with the circumstances under which Telegraphers may still perform clerical duties. But that general question is not involved here so those awards are not apposite.

Calling crews does not belong to the category of general clerical work which has so often been described in awards of this Division as part of the regularly assigned duties of employes other than Clerks from the president down to the laborer.

Even though the record in this case shows that in the earliest days on this carrier crews were called by an agent-operator, then by a telegraph operator, next, in 1910, by a caller, and finally by a clerk-caller, still this background is not now significant. An important change took place with the execution of an Agreement with the Clerks, effective October 16, 1922. By that Agreement train and engine crew callers were expressly included in the Clerks' Scope Rule, and have been carried over into the Scope Rule of the current Agreement of August 1, 1945.

The very use of the terms "train and engine crew callers" designates a limited type of special work and is thus differentiated from general clerical work. The work of calling crews falls into its own special category and is not incidental to other positions. In this instance, therefore, we find the Scope Rule does classify the work to be performed as well as covering generally the positions included within the scope of the Agreement. Compare Award 3101.

It follows that because of the express terms of the Agreement the work of crew calling cannot now be said to be either incidental or normal to a position covered by some other agreement (such as operator), as contemplated by the reasoning expressed in Award 1314.

Because the terms "train and engine crew callers" are so descriptive of a definite type of work there is no room for any implication that there were outside conditions which deprive the Clerks of the exclusive right to such work given them by the Agreement, as argued in Award 615. Any such implication, if there was any, vanished when the Agreement was made.

Thus, the conclusion is irresistible that by the terms of the Agreement the work belongs to the Clerks. Accordingly, the claim must be sustained.

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 Carrier violated the Agreement as contended by Petitioner.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1947.