

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**

OGDEN UNION RAILWAY & DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the management of the Ogden Union Railway and Depot Company violated the terms of the existing Agreement, to-wit:

(a) By establishing three positions of Station Watchmen and three positions of Warehouse Watchmen, a total of six positions, from the roster of the Special Agent's Department; and

(b) All six positions shall be rated as is presently rated, shall be bulletined and assigned to employees on the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees' rosters of the Depot Company; and

(c) The Company shall compensate the successful applicant for all wage loss suffered subsequent to May 25, 1944. (Wage loss to be considered that differential between the employees position on which actually working and the present watchman rate, excluding overtime.)

EMPLOYEES' STATEMENT OF FACTS: Prior to 1920 there were seven watchmen in the employ of the Depot Company. Messrs. Reardon, Oneill and Ewall were under supervision of the Freight Agent and were carried on the clerical roster of the freight office; Mr. Joseph Jenkins had like working status and seniority on the clerical roster, the three first mentioned worked the day shift the later on the night shift, all performed watching duties around the freight house, warehouse, and freight docks. Mr. McEntire acted as a uniformed policeman in and about the passenger station was under the supervision of the Stationmaster and Mr. McEntire's name appeared on the clerical roster of the Stationmaster's office. Two special agents' names did not appear on a clerical roster, a Mr. Gatlin who watched the cars against the freight docks and Mr. Shoemaker who acted as a train yard watchman. Of this total of seven watchmen five held clerical seniority.

Thru the years following 1920 Mr. Oniell died and a successor was not appointed to his position. Mr. Ewall was transferred to a position of crossing watchman and a successor was not appointed to his position. Mr. Reardon was promoted to position of General Foreman of the Freight Warehouse and Platform, and although he was succeeded in his watchman position by another clerical employe, Mr. Charles Jenkins, Mr. Reardon abolished that watchman position several months after he himself had left it. This writer cannot learn how or when th position of afternoon watchman at the freight warehouse held by Mr. Joseph Jenkins was abolished but it left somewhere in the 1920s not to be reestablished.

The position of Station watchman held by Mr. McEntire during the early 1920 years was vacated by Mr. McEntire by his taking retirement, following which Mr. Richardson from the station director forces and from the clerical roster held the position, Mr. Richardson later went to the City Police

tion Employees per notice of August 24, 1946, proposes to file a dispute that is in fact, if a dispute at all, a dispute between that Brotherhood and the patrolmen's union, arising by reason of both organizations contending to be the duly authorized and designated representative of the employees by the provisions of the Railway Labor Act; and,

(6) That, finally, the alleged violations of agreement, with attendant time claims directed against the carrier by the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, has no proper standing before this Board, is unsupported by the facts, and should be denied.

OPINION OF BOARD: On May 25, 1944, there were six positions filled by employees holding seniority in the Special Agents' Department which the Organization contends should be filled by employees having seniority under the Clerks' Agreement. Three of the positions are alleged to be freight station watchmen and three are alleged to be depot watchmen.

The claim of the Organization is founded on the Scope Rule of the Clerks' Agreement, the applicable part of which provides:

"These rules shall govern the hours of service and working conditions of the following employees: (a) Clerks. (b) Other office, station and store employees, such as * * *, and office, station and warehouse watchmen."

Prior to 1933, positions of freight station watchmen were maintained which were carried on the seniority rolls under the Clerks' Agreement. The duties of these watchmen are described as follows: Checking the employees working on the platform as to their reporting for work and remaining on the job, checking around cars being loaded or unloaded for freight that may have fallen to the ground during handling, check seals on cars at the freight dock, guarding truckers' tickets and checkers' tabs which were placed in containers, and acting as crossing watchmen while yard crews were switching the freight house. These positions were generally filled by employees who had become physically incapacitated for other service. These positions were abolished on various dates prior to January, 1933.

The positions at the depot were listed as Station Police during this period. They directed passengers and exercised police authority when necessary. They were paid the rate of a passenger director. They were generally deputized as special police officers by the City of Ogden. These positions were discontinued in 1933. Later a passenger director and an assistant stationmaster were deputized as special police officers of the City and performed policing duty in connection with their regular duties. Their commissions as special officers were revoked in 1937.

In 1945, the National Council Railway Patrolmans' Union became the authorized representative of the patrolmen employed by the Carrier. We think a patrolman may be generally described as an employe whose primary duty is the rendering of police service, who is generally commissioned to so do and who is usually armed or entitled to carry arms in the performance of his duty.

The former positions which were filled by employees under the Clerks' Agreement were watchmen as distinguished from policemen in so far as their primary duties were concerned. Their duties as hereinbefore detailed indicate that they were not comparable to the duties of a patrolman and that the reasons for the existence of the latter were altogether different than those of the former. We are of the opinion that the old positions carried under the Clerks' Agreement were properly abolished and the positions subsequently established were properly filled with patrolman having seniority under the Patrolmen's Agreement. This being true, 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 parties waived oral hearing thereon;

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 Agreement was not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.