

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

**THE GULF, COLORADO AND SANTA FE RAILWAY
COMPANY**

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

(a) Carrier violated the rules of the Clerks' Agreement when it assigned or permitted various Mechanical Department Foremen at Cleburne, Texas, to perform routine clerical duties; and,

(b) Sam Peacock and/or any other occupants of Shop Distribution Clerk Position No. 85, rate \$9.36 (now \$13.28) per day be compensated at punitive rate of this position for one hour five minutes per day from March 1, 1946, until violation is corrected; and,

(c) W. H. Chambless and/or any other occupants of Shop Distribution Clerk Position No. 86, rate \$9.36 (now \$13.28) per day be compensated at punitive rate of this position for one hour per day from March 1, 1946, until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Mechanical Department shop employees are required to register in and out on time cards by the use of time recording clocks. New time cards are prepared by clerical employees for each semi-monthly pay period by showing the employees' name and number thereon, and the time recording clocks register on these cards the date and time that each employee reports for or is released from duty at the shop facility or roundhouse during such pay period. The clock cards thus constitute the original record of shop employees' time and are the records from which payrolls are ultimately prepared. Prior to April, 1932, the duty of "watching clocks" during the various periods each day that Mechanical Department employees were registering in or out at Cleburne, Texas, was assigned to and performed by clerical employees exclusively. (See Employees' Exhibits "A" and "B".)

In 1932-1933, depression years, a new method of handling the distribution of time of shopmen was adopted by this Carrier and certain timekeeping was centralized in its General Office at Galveston. As a result of these changes the clerical force at Cleburne was reduced to five employees and thereafter there was simply not enough clerks to watch all of the time recording clocks and Carrier, by unilateral action, initiated the practice of assigning or permitting Mechanical Department Foremen to take over and perform a portion of the "clock watching" duties of the remaining employees. This practice continued and gradually increased over the years until by March 1, 1946, even though

In assigning 13 hours and 30 minutes work each day to clerks, the Carrier is more aptly described as finding that such an amount of work exists in excess of the capacity of the foremen and mechanical employes to perform. This excess work belongs to the clerks from the time the Carrier determines that it exists. But this does not mean that it is exclusively the work of the clerks in the sense that it could not be performed by the foremen and mechanical employes to whose work it was incidental if they had the capacity to do it."

Award 3221

"We have held that timekeeping is work incidental to the position of Gang Foreman. Whenever in the judgment of management the clerical work of a foreman's position becomes so burdensome that he is unable to perform it, it is work which must be assigned to a Clerk. When the necessity for assistance to the Foreman is past, the Clerk's position may properly be abolished and the work returned to the Foreman to whose position it is incidental. Awards 1694, 2334 and 2685."

The Carrier repeats that the instant dispute is entirely without merit or schedule support and should, for reasons heretofore expressed, be denied.

The Board's attention is finally directed to the fact that the Brotherhood's claim contemplates that the complaint Messrs. Peacock and Chambless shall be compensated at punitive time and one-half rate for time not worked. Without prejudice to its aforesaid position that the instant claim is without support in the rules of the current Clerks' Agreement, or otherwise, the Carrier further asserts that the Third Division has repeatedly held that time not actually worked cannot properly be treated as overtime and paid for at punitive rates but that compensation under such circumstances must be limited to the pro rata rate—see Awards 3587, 3876, 3890, 3910, 4037, 4046, 4179 and many others.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is based upon the premise the Carrier has been taking work reserved to Mechanical Department shop employes under terms of the current Clerks' Agreement and assigning it to Mechanical Department foremen at Cleburne, Texas, in violation of the terms of that contract.

At the outset it can be said the record reveals that on all dates here in question: (1) there was in effect an Agreement between the parties, with a scope rule, Article I, controlling the disposition of work available to clerks generally and excepting such employes as were not covered by its terms, (2) there was in existence a Memorandum of Interpretation of Application of Article I of the Agreement, providing that the work of Class 1, 2, and 3 employes referred to therein, when performed by officials and others not covered by its terms, incident to or as a consequence of their official or other positions, should not be subject to provisions of the Agreement, and (3) that although foremen are not officials they were "others not covered by the Agreement" referred to in the Memorandum of Interpretation.

For many years, in fact long prior to the effective date of the Agreement, time recording clocks have been utilized in the Carrier's Mechanical Department facilities at Cleburne, Texas, the point involved in this dispute, as well as numerous other points on the Gulf, Colorado, and Santa Fe Railway Company, for the purpose of registering shop crafts employes in and out when reporting for and leaving work.

The registration procedure can be described as follows: a clock card is issued to each employe on which the "shop number" of the individual appears.

The cards are placed in a card holder, or rack, adjacent to each clock, containing slots which are numbered to correspond with the shop number of the individual employee. In the operation of registering, the employee removes his card from the slot in the rack, inserts it in the clock and presses a lever which causes the clock mechanism to record the time of day on the card, following which the employee generally deposits the card in a box located at the clock. After registration of all employees is completed the cards are "racked", an operation which consists of returning each card to the slot bearing a number corresponding to that on the card so that the card will be in proper place for the next registration.

According to the record the task of watching time clock registrations does not involve the preparation of any record but simply consists of standing by to observe the employees while engaged in the registration process for the purpose of (a) preserving order at the registration point, (b) obtaining an advance check on employees who are late for or may not report to work, (c) preventing employees from checking in or out for each other or appearing for out registration too far in advance of quitting time.

The facts giving rise to this dispute are really of little consequence. About all we need to say about them, and then only for explanatory purposes, is that on or about March 1, 1946, the Carrier, which for many years prior to that date had been assigning clock watching duties to both Mechanical foremen and clerks, made some changes in the clock watching assignment at Cleburne unsatisfactory to the Clerks who protested the action and eventually filed the instant claim. The claim, and the Brotherhood very frankly so admits, is based solely upon the proposition that all clock watching work at Cleburne belongs to the Clerks under the scope rule of their Agreement and that the Carrier's action in assigning all or any part of it to its Mechanical Department foremen, who hold no seniority rights under that contract, simply resulted in removing routine clerical work from the scope and operation of the contract in violation of its terms. On the other hand, the Carrier's principal contention is that the involved work is incidental to or in consequence of the regular duties of Mechanical Department foremen. If the Carrier's contention is sustained, since the Memorandum of Interpretation to which we have heretofore referred specifically provides such work is not subject to the current Agreement and since, as we have seen, foremen come within its terms, the claim must be denied. We therefore turn directly to the question whether the watching of time clock registrations is work incidental to the regularly assigned duties of the Carrier's Mechanical Department foremen.

Heretofore we have pointed out the duties of employees assigned to the watching of time clock registrations and the reasons why work assignments of that character are necessary and required. It would serve no useful purpose and merely encumber the record to again set forth either duties or reasons. It suffices to say that when both are considered and carefully received it becomes crystal clear that clock watching work is far more supervisory in character than clerical. Hence, since foremen are supervisors, we are of the opinion that such work is normally, reasonably and logically incidental to the position of a foreman and that when it is performed by him it is to be regarded as performed in consequence of his position. It follows the Carrier's action in assigning the work here involved to foremen and in permitting them to perform it was not in violation of any of the terms of the current Agreement.

The conclusion just announced is fully supported by our prior decisions. We have repeatedly held that timekeeping work of the character here involved is work incidental to the position of a foreman and that when assigned to and performed by him it is treated as excluded from the Clerks' Agreement. See Awards 1694, 2334, 2685 and 3221. To say that the work of watching time clock registrations, which it must be conceded is much more supervisory and far less clerical in nature than timekeeping, is not to be considered as incidental to or performed as a consequence of the position of

a foreman would be entirely inconsistent with what has been said and held in such Awards.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day October, 1950.