

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon—Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate the Agreement governing hours of service and working conditions between the parties when

(1) On or about May 9, 1951, it transferred the work of watchmen out from under the scope and operation of the Clerks' Agreement and assigned such duties to the Chief special agent and two special officers at Columbus, Georgia, employees not covered by the Clerks' Agreement or any other agreement, and that

(2) Ticket Clerk H. R. Cornelius, Columbus, Georgia, shall now be paid for a pro rata day at the watchman's rate for each day the chief special agent or special officers were allowed to perform this work on or about May 9, 1951 and subsequent thereto until the condition is corrected, and

(3) Carrier shall be required to reestablish sufficient positions of watchman by bulletin and assignment under the Clerks' Agreement at Columbus, Georgia, to perform all the work that is now being performed by these employees who are not covered by the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: For many years, prior to August 16, 1949, there were a total of three (3) positions of watchman at Columbus, Georgia which were covered by the Clerks' Agreement. These watchmen were assigned from 7 P. M. to 7 A. M. on staggered shifts of 7 P. M. to 3 A. M., 11 P. M. to 7 A. M., and a relief position as outlined in Bulletin of March 17, 1949, copy of which is attached and identified as Employees' Exhibit No. 1.

The duties of these three (3) positions of watchman were to patrol Columbus Yards from the Yard proper to the Yard limits, patrol around the Freight Agency, Yard Office, Shops, Roundhouse and Passenger Station, check doors on cars of incoming and outgoing trains for evidence of tampering or robberies, also give similar check to doors of merchandise cars on Columbus Freight Transfer. Evidence of these duties and assignments is corroborated by letter from Mr. E. M. Buntin, former watchman, dated

normally performed by a watchman. When Carrier dispensed with the watchmen, it likewise dispensed with the protection these men afforded.

In this same letter of December 18, 1951, the General Chairman took exception to the hours the Special Agent and Officers may have worked, attempting to show that sometimes these men worked as late as 3:30 A. M., and presto!, there existed a violation of the Agreement. Carrier has set out in its Statement of Facts, and again reiterates, that Special Agents and Officers have no regular assigned hours, and are required to work whenever and whatever time of the day or night protection is needed. One day an Agent might work 15 hours and the next day 4 hours. An extreme example of the Clerks' contention here would be that when, say, 11:00 P. M. came and the Agent was hot on the trail of a thief, he must promptly at 11:00 P. M. give up the chase and knock off for the day. No, Carrier has not contracted its rights away in this respect, and, in fact, the Clerks have nothing whatever to do with the Chief Special Agent, Special Agents or Special Officers.

The very vague and generalized accusations by the General Chairman in this letter (Exhibit "F") are indeed barren—**not one specific instance of where a violation actually occurred.**

Summarizing, Carrier has proven beyond the slightest doubt both by record and by sworn statements of the men who are on the ground and who are in position to know the facts, that there has been no violation as alleged by the Clerks. It has not been brought out by the Clerks either by correspondence, or in conference, specific instances of violation, therefore, it is obvious that no basis for a claim exists.

The Carrier wishes to state that all data submitted in support of its position in this case has been presented to the Employees or duly authorized representative thereof, and made a part of the question in dispute.

In view of all the facts as stated above, Carrier urges that the claim be denied by this Honorable Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made by the Organization on behalf of Ticket Clerk Cornelius, at Columbus, Georgia, for a pro rata day's pay for each day from May 9, 1951, and subsequent thereto, that Carrier has transferred watchman work from Claimant to the Chief Special Agent and two Special Officers, not coming under provision of the Clerks' Agreement. In addition the Organization claims the Carrier should be required to reestablish positions of watchman by bulletin and assignment to perform the work now assigned to persons not under the Clerks' Agreement.

Carrier contends:

1. That this Board has no jurisdiction over this matter since the question of Notice to Third Party has been involved. It is contended that the rights of third parties may be adversely affected by an Award this Board may make, and that Notice to such third parties has not been given.

2. Carrier further contends that when the positions of Watchmen were abolished on August 15, 1949, the duties required of such positions were discontinued, and not, as alleged by the Organization, assigned to Special Officers, and therefore the claim as filed is without merit and should be denied.

As to Carrier's position on the jurisdictional question involving Notice to Third Parties whose rights may be adversely affected by an award this Board may make, in this case the Special Agents not coming under the Clerks' Agreement, we hold that such position is not well taken and should be denied. There is nothing contained in the record, which we must rely on, that the rights of any third parties could be adversely affected by a sustaining award.

The Special Agents whom the Clerks contend were required to perform the duties when the Watchmen positions were abolished, were added to the duties already required of Special Agents. There is nothing in the record before us, to sustain the Carrier's contention that the third parties' rights could be adversely affected by any award this Board may render. Therefore we must deny Carrier's contention on this proposition.

The Clerks rely on Scope Rule (a) and take the position that Carrier by abolishing the Watchmen's positions has violated the rule, by stating that Carrier has failed to comply with this provision by its failure to comply with Rule 73, which provides the Agreement shall continue in effect until it is changed as provided by the Railway Labor Act as amended, or by desire of either party to revise or modify the rules, whereby 30 days' notice must be given on the proposed change and conference held, etc. We are completely at a loss to understand the position taken by the Organization. Here is a case in which Carrier saw fit to abolish the positions of Watchmen. While the Clerks contend the work remained and became a part of the duties of Special Agents, a craft not covered by the Clerks' Agreement, there is no evidence in the record to support this contention, as certainly what employes formerly held the position prior to the time the claim arose is not supporting evidence. We are of the opinion Carrier acted clearly within its prerogative when it abolished the positions, and it is clearly shown that when the positions were abolished the work was discontinued. Rule 20 (a) provides for the abolishment of positions, and the method to use to bring about the abolishment.

It is therefore the Opinion of the Board that no conclusive evidence has been produced to show any violation of the Agreement as alleged. We again reiterate as we have said many times before, the burden of proof is upon the party making the claim, and where competent proof is lacking a sustaining award is improper. Where it is shown, as here, the positions were properly abolished and the work was discontinued, this Board by conjecture cannot say the work was taken over by other parties without some supporting proof. The claim should be denied in its entirety.

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

There is no evidence to support the claim as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1953.