

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

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

(1) The Carrier violated and continues to violate the current Agreement between the parties, effective August 1, 1945, and subsequent amendments, when it removed clerical work from the scope thereof and re-assigned such work to the Agent and Telegraphers, employees not covered by the scope of the Clerical Agreement, at Fort Lauderdale, Florida, prior and subsequent to the abolishment of a scheduled position of Bill Clerk on April 16, 1949, and

(2) Cashier E. M. Woodall, Sr., shall be compensated for two hours at the time and one-half rate of his regular position for November 10, 1950, and for each date subsequent thereto until all the clerical work is restored to the Clerks' Agreement, and

(3) As a penalty, the Carrier shall be required to reimburse all other employees adversely affected for all wage loss sustained and expenses incurred account of the violation in the removal of clerical work from the scope and application of the Clerks' Agreement, such claim to run until the condition has been corrected by the assignment of such work to employees under such Agreement, and,

(4) That a joint check of the Carrier's records be made by the parties for the purpose of ascertaining the extent of the violation after April 16, 1949.

EMPLOYEES' STATEMENT OF FACTS: For a good number of years, prior to the instant dispute, there has been a controversy between the parties in connection with the arbitrary removal of clerical work from the scope and operation of the Clerks' Agreement at this location and the transfer of such work to the agent and telegraphers, employees who have no rights under the Clerks' Agreement, at Fort Lauderdale, Florida.

Carrier maintains two facilities at this location, consisting of a passenger station and a freight station, which are separated by a distance of approximately 1,000 feet.

In First Division Award 12312, F v. MP, Referee Boyd said:

"The claim for 'all firemen in road service when required to perform switching at Hoisington Yards August 12, 1935, and subsequent dates until practice stopped and yard crews returned to service' is indefinite; and if time claims were not filed, does not give the Carrier adequate notice of the claim. Mr. John Thad Scott, Jr., acting as referee said in Award 11642, 'we do not propose to require the Carrier to search its records to develop claims of unidentified trainmen on unspecified dates.'"

In First Division Award 12345, F v. MP, Referee Boyd said:

"Claims are also made for 'all firemen all other dates when required to turn passenger train on wye and back train into station in the Little Rock Terminal.' Such indefinite claims should be dismissed without prejudice."

In First Division Award 15752, EF v. DL&W, Referee Smith said:

"The carrier raises the question as to whether or not this Board can properly assume jurisdiction over those claims which are made in behalf of all other engineers and firemen having claims of record, for the reason that they were not handled on the property. We think that this objection is well taken. There is no affirmative showing that these claims were the subject of initial conference and subsequent appeal on the property as specifically required by the Railway Labor Act and Circular No. 1 of this Board."

7. Conclusion.

Carrier contends that:

1. The Clerks' Agreement has not been violated.
2. It is incumbent upon the Employees to prove otherwise.
3. The Third Division, National Railroad Adjustment Board, should not assume jurisdiction without extending notice to representative of the Order of Railroad Telegraphers.
4. There is no merit whatever to the claim.
5. If jurisdiction is assumed, the claim should be denied in its entirety.

Carrier affirmatively states that all data contained herein has been made known to, discussed with, or is well known by Employee representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts in connection with this claim appear to be as follows:

The Carrier maintains a Freight and Passenger Station at Fort Lauderdale, Florida. The freight station and the passenger station are about 800 feet apart. An agent (covered by the Telegrapher's Agreement) supervises the work of all station employees at Fort Lauderdale. Clerk-Telegraphers covered by the Telegraphers' Agreement are located at the passenger station and clerks are located at the freight station. On April 16, 1949, the Carrier abolished a position of Bill Clerk at the Freight Station and assigned the work of "expensing of inbound waybills" to a Telegrapher-Clerk at the Passenger Station. Prior to the establishment of clerical positions at the Freight Station the work of "expensing of inbound waybills" was performed at the Passenger Station by Telegrapher-Clerks and for varying periods from 1936

to 1945 it was also so performed. There is conflict in the record with respect to how the other items of work on the abolished Bill Clerk's position were distributed but as will subsequently appear in this Opinion a resolution of that conflict is not necessary to a disposition of this claim.

As is apparent from the statement of claim, the employees assert that work was improperly removed from the scope of the Clerks' Agreement and assigned to others (Telegraphers) not covered by the Agreement.

It is argued on behalf of the Carrier that the case should not be decided on the merits because of failure of the Board to give notice to other "employees involved," i.e., The Order of Railroad Telegraphers and the individual employees in interest pursuant to Article 3, First (j) of the Railway Labor Act.

We are constrained to agree with the Carrier's contention with respect to jurisdiction. As commented in Award 6799, the question of notice under Article 3 First (j) of the Railway Labor Act is not a novel one to this Referee. As indicated therein since the date of Awards 5599 and 5600 there have been no developments in the law which would warrant any change in the views of this Referee with respect to this matter. As a matter of fact the decision of the 7th Circuit in the Illinois Central case decided March 19, 1954, lends further support to the correctness of the views previously expressed. Unless and until the Supreme Court reverses the opinions of the various Circuit Courts on this subject, regardless of personal opinion as to what the law ought to be, we are impelled to accept the Circuit Courts' interpretation of the statute as correct.

We, therefore, conclude that we are without jurisdiction to decide this claim on the merits and find that the claim should be dismissed without prejudice.

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 claim should be dismissed without prejudice for the reasons set forth in the foregoing "Opinion of Board."

AWARD

Claim dismissed without prejudice in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of November, 1954.