

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**

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(1) The Carrier has violated and continues to violate the Clerks' Agreement of September 1, 1944, as amended, by requiring or permitting Telegraph Operators, employees not covered by the Clerks' Agreement, to leave their posts in the Telegraph and Ticket Office, Opelika, Alabama, and perform work in the Yard Office, located in the same building but approximately sixty (60) feet from the Telegraph and Ticket Office and separated therefrom by the Waiting Room, and that therefore,

(2) Clerk G. B. Howard, Jr., and/or his successors, if any, shall now be compensated for one (1) 2-hour call, as per Rule 49 (a), for each and every instance this violation has occurred since June 25, 1953, the first time this violation was called to the attention of the System Committee, retroactive from date condition is corrected.

EMPLOYEES' STATEMENT OF FACTS: Under date of June 25 and 27, 1953, Yard Clerk G. B. Howard, Jr., Opelika, Alabama, filed a claim for one (1) 2-hour call each under Rule 49 (a), because Telegraph Operators were being required or permitted to desert their posts of duty in the Telegraph and Ticket Office at Opelika, Alabama, and go to the Yard Office, located approximately sixty (60) feet from the Telegraph and Ticket Office, to perform work in connection with preparation of Form 2605, Passing Report, getting home routes for empty cars, and typing of Form 61—Report of Solid Cars Received from Connections; all of which work is regularly performed by three Yard Clerks during the tour of their regular assignments which are as follows:

G. B. Howard, Jr., works 6:00 A. M., to 3:00 P. M., Wednesdays through Sundays, off days Mondays and Tuesdays.

W. R. Stewart works 3:00 P. M., to 12:00 Midnight, Saturdays through Wednesdays, off days Thursdays and Fridays.

4. Custom, Tradition and Past Practice Sustains the Carrier.

The record (Carrier's Exhibits "B," "C," "D," "E," "G," and particularly "L") shows that by custom, tradition and past practice the claim is without basis, and is designed only to destroy the long recognized past practice.

This work has always been a part of the Operator-Clerk's assignment and is clearly within the definition set up by this Board in Award 4492, as follows:

"It is the rule, long adhered to by this Board, that a telegrapher with telegraphic duties to perform may properly perform clerical work which is incidental or in proximity to his telegraphic work, in such amount as to fill out his telegraphic assignment."

This claim is highly technical, and is apparently designed to set up a precedent by which the Employees can place an unnecessary burden upon the back of the Carrier, not only at Opelika, but other points as well.

CONCLUSION

The Carrier asserts that it has established that the claim in this docket is without merit, and that it should be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier maintains two offices at Opelika, Alabama, designated as Yard Office and Telegraph and Ticket Office. Prior to the 40 Hour Week Agreement, effective September 1, 1949, three Yard Clerks were assigned at the Yard Office who worked these assignments beginning at 6:00 A. M. and ending at 2:00 A. M. Following the application of the 40 Hour Week Agreement, the assignments were changed to two regular assignments and a regular relief position working within the hours of 6:00 A. M. and Midnight. A Clerk-Operator in the Telegraph and Ticket Office, which was manned with Telegraphers, was used on June 25 and 27, 1953, to do work between 1:00 A. M. and 2:00 A. M., which was formerly performed by Clerks assigned at the Yard Office. The two offices were in the same building but were approximately 60 feet apart. The record indicates that the Clerk-Operators were instructed to perform the necessary work at the Yard Office while the Clerks were off duty. The Organization contends this is in violation of the Agreement.

The dispute arises out of work which is necessitated by the arrival of Western Railway of Alabama Train No. 210 which usually arrives between midnight and 2:00 A. M. The work involved is that which Yard Clerks perform within the hours of their assignments. Clerk-Operators have performed the work after 2:00 A. M. in the past, and their right to do so is not questioned. The claim is based on an unusual scope rule provision which reads in part:

"Positions or work within the scope of this agreement at effective date thereof belong to employees covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the scope and operation of these rules except in the manner provided in Rule 73."

Rule 1 (a), Current Agreement.

Briefly stated, the Organization contends the language of the foregoing rule freezes all work being performed under the Clerks' Agreement, on the effective date thereof, within the scope of that agreement until it negotiated out as provided in Rule 73.

The record is clear that at the time the scope rule was agreed upon, Clerks were performing the work in question. The rule preserves the work for the Clerks. Awards 6141, 6357, 6444, 6937, 7047, 7048. While some of the scope rules in the foregoing cases provide in effect that positions may not be removed from the agreement except by negotiation, the rule here involved provides that positions or work may not be removed except by agreement. The use of the term "work" in addition to the term "positions" must be given meaning. We must presume that the propriety of the rule as written was fully considered by the parties before it was agreed upon. The work here involved was taken from Clerks and given to Telegraphers without negotiation. It is a violation of the rule.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1955.