

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, 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 violated and continues to violate the Clerks' Agreement governing the hours of service and working conditions between the parties when, effective at the close of work on February 28, 1955, it abolished the three (3) positions of Shop Watchmen at Macon, Georgia Shops and contemporaneously transferred the work of those employees to Shop Foremen and other employees not covered by the Clerks' Agreement and that, therefore,

(2) Shop Watchmen A. T. Rogers, Jr., W. T. Collier, E. W. Leslie, H. L. Burnette and/or their successors, if any, shall now be compensated for all wage and other losses sustained since February 28, 1955, i.e., at pro-rata rate of \$1.818 (present rate) per hour, for each and every calendar day since above date and subsequent thereto until this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to the date of this complaint and violation of agreement, February 28, 1955, there had been maintained at Macon, Georgia Shops a number of positions of Shop Watchmen whose duties are briefly set forth in Carrier's Bulletins Nos. 1, 2 and 3, respectively dated March 13, 1953, March 23, 1953 and November 9, 1953, copies of which are hereto attached and identified as Employees' Exhibits Nos. 1, 2, and 3 respectively.

While it will be noted that the Bulletins require these Watchmen to "patrol all property and buildings inside shop fences" there was considerably more responsibility incumbent upon the Watchmen's positions than the bulletins outlined. Briefly, the duties of the Watchmen's positions were substantially as follows:

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"The Carrier emphatically states that such information was obtained through telegraphers and the close proximity of a telegrapher's office is noted in the record. **In absence of proof to the contrary by the party asserting the claims, we must accept such an explanation.**

AWARD

"Claims denied." (Emphasis added.)

and many other awards. **The burden of proof rests squarely upon the shoulders of petitioners.**

CONCLUSION

Carrier respectfully submits that:

(a) The effective agreement has not been violated by having the remaining work performed by **automatic mechanical devices**. Nor were the positions **illegally abolished** as claimed by the Employees, because the force was reduced in strict accord with Rule 20.

(b) Work formerly assigned to and performed by occupants of the three Shop Watchmen assignments here involved **has not** been assigned to or performed by Shop Foremen nor other employees not covered by the Clerks' Agreement. Such Clerks' Agreement does not confer upon any employee or group of employees monopolistic rights to performance of any work, and particularly where mechanical devices are employed in lieu of any persons. There is no justification whatever to re-employ these Shop Watchmen at Macon Shops as they would have absolutely nothing to do. The Interstate Commerce Commission requires the railroads to operate as efficiently and economically as possible, and certainly we have no need whatever for the positions involved.

(c) The Employees have not established any proof upon which to bottom their general assertions that the Agreement has been violated. This Board has held in numerous awards on this property and on other carriers that the burden of proof rests upon the petitioner.

For all of the foregoing reasons based on facts, Carrier argues that a denial award is in order and respectfully requests this honorable Board to so hold.

All data submitted in support of Carrier's position in this claim has been presented orally or by correspondence to the Employees or duly authorized representative thereof, and made a part of the dispute.

OPINION OF BOARD: The Carrier installed in its shops an American District Telegraph automatic fire alarm connected directly with the fire department at Macon, Georgia, and abolished the positions of three shop watchmen whose primary duties had been to patrol the buildings and yard within a thirty-five acre area for fire. They were deputized as police and had

some minor duties, such as checking traffic and personnel during changes of shifts, and seeing that certain lights were turned on at night and turned off in the morning. Fires had theretofore been reported to the Macon fire department by employes over telephones available at various points.

The Employes' Position is that by the change the watchmen's work was "farmed out" to ADT device and/or employes, the City of Macon Fire Department employes for performance of a part of the fire protection, and to Shop Foremen and other employes not covered by the Clerks' Agreement with respect to other duties as well as part of the fire protection involved."

The evidence does not indicate that the shop watchmen had fire-fighting or fire-reporting duties beyond those shared by other employes. It is admitted by the Employes that the use of the ADT automatic fire alarm system in lieu of the shop watchmen was not an infringement of the Rules. The contention is that the watchmen also had some duties in police work, traffic control and control of lights which were thereupon transferred to other employes not covered.

The evidence is clear that the police duties of the watchmen were very minor and in any event had been handled also by special agents who continued to do so. Time clocks were installed to turn on and control certain lights formerly controlled by the watchmen and others.

The other work, consisting chiefly of minor guidance of traffic, was entirely eliminated. But it is contended that watchmen's duties were transferred to foremen on March 1, 1955, by the following bulletin:

"ALL FOREMEN:

"Installation of the ADT System has brought about discontinuance of watchmen's service at Macon Shop, effective March 1, 1955. The watchmen have in the past provided us with protection against theft and pilferage as well as trespassing. Those watchmen have in many cases found small fires which resulted from sparks from trash fires and from cutting torches and welding.

"Effective at once, you must see that all valuable company property such as hand and portable tools are put under lock and key at the close of work period each day. Foreman in charge must check to be sure that no sparks are left which might cause damage to property. All lights in buildings and yard not needed for protection throughout the night should be extinguished at the end of the work day.

"I shall thank each of you in your next safety meeting to stress to all employes the necessity for exercising caution in entering and leaving shop yard as there will be no watchman on duty to direct traffic at any time.

"(Signed) H. M. McKay,

MASTER MECHANIC."

The bulletin instructed to foreman (1) to see that all valuable company property such as hand and portable tools were locked up at the close of the work period; (2) to make sure that no sparks were left to cause fires; and (3) to see that all lights in buildings and yard not needed for protection during the nights were turned off at the end of the work day.

There is no evidence that the locking up of tools was ever the duty of the watchmen, or that the other two items mentioned in the bulletin had ever been their exclusive duty; on the contrary; all three items are things normally within the province of foremen. The references in the first and third paragraphs to theft and traffic show that those duties were eliminated and not transferred to foremen or anyone else.

We think it is clear that none of the duties exclusively belonging to the watchmen were farmed out or transferred to other employees.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1960.