

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violates the Agreement when, at the Atlanta, Georgia, Freight Agency, it requires Freight Handlers (Group 5 employes) to perform the duty of checking freight, work belonging to Clerks (Group 1 employes).

(b) As a penalty, Mr. F. J. Lanford, Delivery Clerk, his substitutes or successors, shall be additionally compensated two hours at proper rate of time and one-half each day beginning sixty (60) days prior to date claim was filed and continuing until the violation is corrected.

NOTE: Reparation due employes to be determined by joint check of Carrier's payroll and other records.

EMPLOYES' STATEMENT OF FACTS: 1. Employes covered by the effective Agreement are classified into five separate seniority groups or districts: Group 1, Clerks and Machine Operators; Group 2, Waybill and Ticket Assorters; Group 3, Messengers, etc.; Group 4, Storehouse employes; and Group 5, Laborers.

2. Checking freight (comparing packages of freight with documents describing the consist thereof and noting discrepancies) is work belonging to employes embraced within Group 1. Such work is ordinarily and customarily assigned to and performed by Group 1 employes classified as "Check Clerks", "Receiving Clerks", and "Delivery Clerks". A copy of Vacancy Bulletin advertising vacancy in position of "Delivery Clerk" position at the Atlanta, Georgia, Freight Agency is attached hereto and identified as Employes' Exhibit "A".

3. Shortly before the instant claim was filed, it was discovered by the local committee in Atlanta that Group 5 employes were being required to go into the freight warehouse, check freight packages in the warehouse against

work of checking freight is performed by Group 1 clerical employees, not by Group 5 employees as alleged.

Insofar as the warehouse operation is concerned, the Group 5 employees at Madison Avenue freight station work under the direct supervision of the Group 1 chief delivery clerk and the delivery clerk. They are performing the duties of their respective groups. At no time during the handling of this dispute on the property did the employees allege that the two warehouse porters were "writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements" as defined in Rule 2(a) of the agreement. They could not allege this, as such was not the case.

Without prejudice to its position that there has been no violation of the agreement as contained in part (a) of the claim, carrier also points out that the effective agreement does not provide for penalty payments such as demanded in part (b). In the handling of claims involving money payments, it must be shown that there was a violation of some rule or provision of the agreement which caused claimant to lose compensation that he would otherwise have earned. In this case, there has been neither a violation of the agreement nor one penny's loss of compensation by claimant. Clerk Lanford's assigned hours are the same as those of the warehouse porters.

Carrier has shown that there has been no violation whatever of the agreement, that the employees have acquiesced in the practice now complained of for more than twenty-five years, and that the two Group 5 employees are not checking freight or performing any work belonging to Group 1 employees.

For the reasons stated, this claim is clearly not supported by the rules of the effective agreement and should be denied in its entirety. Carrier respectfully requests that the Board so decide.

All pertinent facts and data used by the carrier in this dispute have been made known to the employee representatives.

(Exhibits not reproduced)

OPINION OF BOARD: The Organization contends that the Carrier has been violating the Agreement by requiring Group 5 employees classified as warehouse porters to perform checking of freight in the warehouse at the subject location. It is asserted that this is work that is reserved to employees in the Group 1 (clerks) seniority district.

The record shows that the warehouse porters use the delivery sheets which are placed on clipboards near the freight in the warehouse in order to locate and assemble the packages comprising each shipment in consignee order. The porters mark in crayon on one of the cartons most visible the pro or freight bill number and the number of cartons in the shipment. When unable to find all of the packages in a particular shipment as indicated on the delivery receipt, the porter marks on one of the packages the discrepancy involved. He also marks on a corner of the delivery receipt the actual location of that shipment in the warehouse. A delivery clerk (a Group 1 employee) then takes the delivery receipts for each warehouse section and checks the shipments on the warehouse floor against the delivery receipts, signing thereon his last initial at the time the check is made. If a shortage is found he writes an exception across the face of the delivery receipt and signs the agent's name.

The evidence indicates that the warehouse porter's use of the delivery

receipts (freight bills) and the marking they do, as above described, are incidental to their primary function of locating and assembling shipments in order of consignee. We further note that the porters have been performing this work in the same manner for fifteen to twenty-five years without any complaint having been made that the Agreement thereby was being violated. We conclude that the subject claim is without merit.

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 Carrier did not violate the Agreement.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1961.