

**Award No. 10164**  
**Docket No. CL-10070**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Walter L. Gray, Referee**

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**PARTIES TO DISPUTE:**

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

**SOUTHERN RAILWAY COMPANY**

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

(a) The Carrier violated the Agreement when, at Dalton, Georgia, it required the Agent, not covered by the Clerks' Agreement, to perform work belonging to employees covered by the Clerks' Agreement.

(b) As a penalty, Mr. R. L. May, his substitute or successors, shall be additionally compensated for a two hour "call" at time and one-half rate beginning sixty (60) days prior to August 10, 1956, each day Monday through Friday, and continuing until the violation is corrected. Claim to also include Saturdays and Sundays the Agent performs these duties.

**EMPLOYEES' STATEMENT OF FACTS:** 1. At Dalton, Georgia, the Carrier's Freight and Passenger Stations are located approximately two city blocks apart. On August 10, 1956, there were three Telegraphers employed at Carrier's Passenger Station around the clock. There were five Clerks employed at the Freight Station. There were, also, employees under the Clerks' Agreement classified as "Freight Handlers" (Seniority Group 5, Rule 1). Supervision of Carrier's operations at Dalton, Georgia, was vested in an "Agent", Mr. M. C. Pinion.

2. Effective on or about June 4, 1956, the Carrier began to require a daily check of yard and industry tracks in or near the corporate limits of Dalton, Georgia. The duty required approximately 13 miles of automobile travel each day, for which the Agent, who was required to perform the work, was allowed \$25.00 per month automobile expense. One hour, or slightly less, was required for the Agent to perform this duty away from his office.

3. Checking of tracks, or yards, at Dalton, Georgia, is a duty covered by the Clerks' Agreement and regularly assigned to employees covered thereby.

Ray and by clerk-telegraphers, such as making waybills and expense bills, posting records, warehouse work, etc. In addition, "making yard check" was included. No bids were received from employees holding clerical seniority rights on the Atlanta Division. One of the Group 5 station laborers was used on the position temporarily during the period the additional position was needed, returning to his assignment in Group 5. It is apparently on the basis of this bulletin that the clerks at Dalton are contending that checking tracks became work belonging exclusively to clerks, including the outlying tracks which the agent did not begin checking until June 1956.

Carrier has shown that the only tracks ever checked prior to June 1956 were those in the downtown area, and that such tracks were checked by the agent and clerk-telegraphers prior to 1954.

Carrier does not agree that checking tracks, either in the downtown or outlying area, is work belonging exclusively to clerks. Such work may be done, as in the past, by the agent, by a clerk-telegrapher, or by an employee covered by the Clerks' Agreement, as operational requirements and business conditions at Dalton warrant.

In presenting claims for money payments, it must be shown that there was a violation of some specific rule or provision of the effective agreement which deprived claimant of the compensation claimed. The effective agreement contains no provision for penalty payments as such. Carrier has shown that the agreement was not violated, and further that claimant and other clerks at Dalton have been compensated in accordance with agreement provisions for all service required of and performed by them. For the reasons stated, carrier respectfully requests that the claim be denied in its entirety.

All evidence submitted in this case is known to the employee representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is a controversy between the Brotherhood of Railway and Steamship Clerks against the Southern Railway Company.

The principal argument between the parties to the dispute centers around an alleged violation of the agreement between the said parties which was effective October 1, 1938 and especially involves Rule 1 — Scope involving clerk. Rule 2 — Definition of each group of employees as covered by the respective sections of Scope Rules. Rule 4 as to seniority and Rule 16 as to filling vacancies under Seniority Rules.

To condense the specific dispute it arose over the fact that the Station Agent at Dalton, Georgia was assigned to check yards and industry tracks. The employees maintain that the Station Agent was not a clerk and did not come under the provisions of the agreement which assigned such duties to a clerk exclusively.

The Carrier maintains that it did not violate the agreement when it required agents and telegraphers to perform clerical work and that the agreement gave them that right if they elected so to do.

That briefly is the case. It has been admitted that the agent checked the tracks without extra pay and so he did not take any money away from anyone. On the other hand the clerk, R. L. May, was paid for his full time and did

not lose any money, nor did any other clerk, by reason of the agent making a check of the yards and industry tracks.

We have searched the agreement most carefully and we cannot find one word that would prevent the agent from performing these duties as mentioned herein. There is nothing whatsoever in the agreement that gives the clerks an exclusive right to the performance of the duties carried out by the agents in checking the tracks.

We are inclined to feel that Referee Swacker was entirely correct when he held in Award No. 615:

**“ \* \* \* it is a mistaken concept that the source of the right to exclusive performance of the work covered by the agreement is to be found in either the scope or seniority rules; they may be searched in vain for a line even implying that they purport to accord to the employees represented the exclusive right to the performance of the work covered by the agreement. The Scope rules describe the class of work; they do not undertake to specify directly the inclusion of all of such classes of work; the Seniority rules merely control the disposition of the work that is available under the agreement.”**

We also find that the following Awards sustain our position: Third Division Award 6068; 2674; 4799.

The assignment of such work as is required in the conduct of business is a matter within the discretion of the carrier except to the extent that it is specifically prohibited in the agreement.

After all this agreement was made in 1938 and this complaint was not made until 1956 which is proof in itself there was no great alarm. The clerks were not injured in the least. If the agreement gave them exclusive rights it would be different but we cannot hold the agreement gave such exclusive rights and excluded the agent.

This Board does not intend in this case in the slightest to limit the rights of the clerks. We are always disposed to give a liberal construction to any contract but in this case we cannot find that the clerks had the exclusive rights claimed by them under the terms of the agreement. The Scope Rules described the class of work; they do not undertake to specify directly the inclusion of all such classes of work. The Seniority Rules merely control the disposition of the work that is available under the agreement.

We must hold that in the absence of a definite exclusion the contract must be deemed to embrace all of the field involved to be a valid contract at all.

We must, therefore, find there was no violation of the agreement by the Carrier and the claim is denied.

**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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1961.