

Award No. 10390

Docket No. CL-9851

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

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

CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Clinchfield Railroad that the Carrier violates the Clerks Agreement:

1. A (A) When over an extended period it used an employe (Carman) not covered by the Clerks' Agreement in the office of the General Car Foreman to perform work covered by the Agreement and included in the bulletined duties of the position of A.A.R. Bill Clerk assigned to an employe fully covered by the rules of the Agreement, continuing until July 2, 1956, when the Carman was removed from the office and all work in connection therewith was returned to employes covered by the Agreement.

(B) When from July 2, 1956, when the carman was removed from the office and the position not bulletined in accordance with claim and verbal agreement, and September 12, 1956, when a new position of Assistant A.A.R. Bill Clerk was established, work was transferred from the position of A.A.R. Bill Clerk to a lower rated position.

(C) When on September 12, 1956, it established a position of Assistant A.A.R. Bill Clerk with a salary of \$349.06 per month and transferred thereto all of the work which had been performed on the position of A.A.R. Bill Clerk with a salary of \$374.68 per month for many years.

B When beginning in 1953 and later it used employes not covered by the Clerks' Agreement in the Mechanical department to perform clerical work in connection with reicing and heating refrigerator cars, reclamation of material, time-keeping, and keeping material records.

C When Mr. Likens Superintendent of Machinery failed to comply with verbal agreement concerning the violations in section A and B or to reply in any way to the claims made by Employees Representative for a period of seven and one half (7½) months.

2. A (a) That Mr. G. J. Westall, A.A.R. Bill Clerk and Mr. J. W. Ingram shall be paid for four (4) hours each at the overtime rate applicable to the position of A.A.R. Bill Clerk for each work day from January 2, 1956, when the claims were first made, to July 2, 1956, due to the use of a carman not covered by the Agreement to perform Clerical work in the office and the failure of Mr. Likens, Supt. of Machinery to comply with or answer the claim.

(b&c) That Mr. J. W. Ingram and his successor Mr. J. T. Sellers shall be paid \$25.52 per month from July 2, 1956, continuing until the rate of pay of the new position of Assistant A.A.R. Bill Clerk is adjusted to the rate applicable to the position of A.A.R. Bill Clerk due to the establishment of a lower rated position to perform all of the duties assigned to and performed by the A.A.R. Bill Clerk for many years and the failure of Mr. Likens, Supt. of Machinery to comply with or answer the claims for a period of seven and one half (7½) months.

B (a) That Mr. T. J. Britton and his successor Mr. G. J. Westall, and Mr. J. R. Lukianoff and his successors Mr. C. R. Scruggs and Mr. J. L. Wright shall now be paid, at the overtime rate applicable to their positions, hour for hour for work performed by employees not covered by the Clerks' Agreement in connection with reicing and heating refrigerator cars, reclamation of material, time-keeping, and keeping material records, continuing until all Clerical work in connection herewith is properly assigned to Clerks covered by the Agreement.

(b) That the Carrier shall be required to make their records available for joint check to determine the amount of the claim.

EMPLOYEES' STATEMENT OF FACTS: On December 29, 1955, Employees' Representative, in conference with Mr. P. O. Likens, Superintendent of Machinery, protested the use of employees not covered by the Clerks' Agreement in the Mechanical Department to perform Clerical work in the Office of General Car Foreman and in connection with reicing and heating refrigerator cars, reclamation of material, time-keeping, and keeping material records and any other clerical work other than that actually performed by foremen and made claims for the work to be assigned to clerks. Mr. Likens expressed complete agreement with Employees position and agreed to make necessary arrangements to comply therewith. On January 2, 1956, Employees' Representative confirmed the conference by letter, "Employees' Exhibit No. 1."

On several occasions during January, February at casual meetings Mr. Likens confirmed his intention to comply with the claims and stated that he just had been too busy to make the necessary arrangements.

On March 19, 1956, eighty one (81) days after the original conference, Employees' Representative wrote Mr. Likens expressing his desire to discuss any plans that might be formulated for settlement of the claims, "Employees' Exhibit No. 2". Mr. Likens replied April 23, 1956, thirty four (34) days

of work-performance records and reports rendered by certain Mechanical Department employes and supervisors.

In our Statement of Facts, supported by Carrier's Exhibits D, E, F, and G, we have shown the forms of records made by such employes and to which we understand the Employes object, although in their presentation to the Carrier nothing of a specific nature has ever been introduced. Traditionally, historically, and customarily, such records and reports have been made by employes other than clerks. We have shown that such work requires an infinitesimal part of the time of such employes. It is a part of their duty and has been performed by such employes from time immemorial, not only on this Carrier but on all others.

Nothing in the agreement with the Employes reserves to them the exclusive right to do all clerical work. Telegraphers do clerical work — conductors write wheel reports — messengers address envelopes — yardmasters make reports — engineers and firemen write reports, and in fact, there is hardly a position in the railroad industry from the president to the water boy who does not do some clerical work.

No work has been removed from clerical employes and nothing in the agreement prevents Mechanical Department employes and supervisors from making the records and reports they make. It is a customary part of their duties and has always been recognized as such. There has been no violation of the agreement.

CONCLUSION

Carrier submits that the claim of the Employes has not been handled with the Carrier according to the rules of the agreement and is, therefore, improperly submitted to the Board.

Carrier further requests that if the Board assumes jurisdiction, no penalty be imposed with respect to Claim 2.A(a) prior to the date of June 19, 1956, when claim was made.

Carrier has shown with respect to Claim 2.A(b&c) and Claim B.(a) that there has been no violation of the agreement by the Carrier, in any respect.

On the whole record Carrier submits the claims of the Employes are not supported by the agreement and respectfully requests the Board to so find and deny the claims.

Carrier has included in this Submission all relevant, argumentative facts and evidence with respect to these claims, all of which have heretofore been presented to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: In regard to the original claim 2 A (a) that Carman Booth was doing clerical work in the General Car Foreman's office, the Carrier complied with this request on July 2, 1956 when it removed the Carman from that office. By its actions Carrier has waived the time limit rule and this part of the claims should be sustained from the effective date of the claim, April 20, 1956 to July 2, 1956, at the pro rata rate.

As to that part of the claims where the Organization asserts that mechanical forces were performing work reserved exclusively to clerks in connection with re-icing and heating refrigerator cars, reclamation of materials, time keeping and keeping materials the Organization relies on the scope rule which is general in nature. In such case this Board has held repeatedly that the past practice of the parties is the proper way to determine whether the work claimed is work exclusively reserved to the clerks. An examination of the record does not show that the work claimed was exclusively reserved to the clerks. Hence, this part of the claim must be denied.

The next assertion of the Organization is that the Carrier violated the Agreement when it created the position of Assistant A.A.R. Bill Clerk and allegedly transferred the work of A.A.R. Bill Clerk to this position. But the Organization has presented no positive proof that this was so. Mere assertions are not enough. Hence this claim must be denied. All the claims are denied with the exception of 2 A (a) to the extent indicated in this opinion.

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 to the extent indicated in the opinion.

AWARD

The claims are denied except as to 2 A (a) which is sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1962.