

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

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

1. The Carrier violated Rules 1, 2, 3 and 19 (c), among others, of the January 1, 1938 Agreement in failing to call and assign furloughed Clerk J. M. Smith to perform extra work at Bowden Yard on October 9, 1960, consisting of making physical check of cars and preparing Form 1633, that was performed by Superintendent Yards and Terminals R. P. Taylor, Jr., and Chief Clerk, Transportation Bureau, J. C. Jones in the office of Chief Operating Officer, supervisory employees not covered by the Clerks' Agreement, and that

2. The Carrier shall now be required to compensate claimant for a day's pay on October 9, 1960, because of its failure to comply with the terms of the Clerks' Agreement.

2. The Carrier shall now be required to compensate claimant for a day's pay on October 9, 1960, because of its failure to comply with the terms of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: On October 9, 1960, a check was made of all foreign cars at Bowden Yard by Superintendent Yards and Terminals, and by Chief Clerk of the Transportation Bureau, working out of the Chief Operating Officer's office at St. Augustine, and the check of such cars on the yard was transferred to Form 1633. On all other dates prior to and subsequent to October 9, 1960, this work was performed by employees covered by the Clerks' Agreement. A similar check was made on the same date at other points on the system and claims were filed in behalf of the clerical employees regularly assigned to this work. The Carrier has agreed to dispose of the other claims on the basis of any award that may be rendered by the Third Division in the instant claim.

On November 3, 1960, District Chairman DuBose, of the Brotherhood, addressed the following letter to Carrier's Superintendent Hamilton:

use was special and essentially related to the technique and purposes of the rate study rather than to the technique and purposes of the accounting force's assignment (Award 4643) . . ."

See also Awards 1802, 2013, 2138, 3003, 3867, 4643, 6347, 6703 and 6725, among others.

The work here in dispute constituted a portion of a special check or inventory of per diem cars being made for the purpose of a study by an officer of the Railway and was made over the entire Railway from the Jacksonville-Bowden Terminal (Milepost 0) to Florida City (Milepost 396.1) simultaneously by supervisory personnel. A similar inventory had never been made before and in all probability will never be made again. The regularly assigned clerks performed the same work that they always performed or that they would have normally performed on date this special inventory was made and no one was deprived of any work to which he was entitled. The information obtained in the special check became no part of the usual permanent records of cars regularly and customarily compiled and kept by Clerks. Therefore, the performance of the work subject of claim by supervisory personnel on October 9, 1960, did not constitute a violation of the Clerks' Agreement, since such work did not supplant, alter or affect work normally performed by employees covered by the Scope of the Agreement.

For the reasons stated the claim is without merit, and should be denied.
(Exhibits not reproduced.)

OPINION OF BOARD: At 12:00 Noon, Sunday, October 9, 1960, a special check of all foreign cars on the Florida East Coast Railway system was made for use in a study conducted by an officer of the Carrier.

This particular claim arises due to the taking of an inventory of per diem cars between St. Augustine and Jacksonville, by a superintendent of yards and terminals and a chief clerk. It is prosecuted on behalf of a furloughed clerk, J. M. Smith, who, employees claim, should have been called and assigned to do the work.

The employees maintain that this is the type of work ordinarily performed by clerks, and should have been, in the usual, routine course of operations, assigned to the available clerks.

Initially, Carrier raises the defense of the Time Limit Rule. It maintains that failure of the employees to notify the Carrier of their rejection of the denial, within 60 days, barred the employees from processing the claim within the nine months rule. This Board has held in many awards, including 2135 and 9942, that in these types of situations, the nine months is allowed and the sixty (60) day notice of rejection is not required. We re-affirm that position in this claim.

We are then left with a question of fact in determining the merits of this claim. Was this routine clerical work, or was it a special supervisory project?

It seems that if the required information could have been extracted from the regular reports, there would have been no need for this special check. The record clearly states that this type of check had never before been made on the system. This was work other than what the Clerks were doing on that day, or what they usually do on any given day. The record does not indicate that this work was covered by the scope of any working agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 11th day of August 1964.