

Award No. 13965
Docket No. CL-14211

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5396) that:

1. The Carrier violated Rules 1, 3 and 76 (among others) of the July 1, 1962 Agreement in abolishing Cashier Position No. 2, New Smyrna Beach Agency, and transferring duties of that position to the supervisory Agent, and employe not covered by the Clerks' Agreement, effective August 25, 1962.

2. That the Carrier shall now be required to restore the work in question to employes covered by the Clerks' Agreement and compensate the senior furloughed clerk for a day's pay from August 27, 1962 to October 7, 1962, inclusive, and each day thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Cashier Position No. 2, New Smyrna Beach Agency, was last advertised under the provisions of the Clerks' Agreement by Bulletin No. 54-C1, dated May 19, 1960, and the following duties were stipulated in that bulletin:

"Duties of this position consist of checking yard, ordering cars, making waybills, keeping demurrage accounts, notifying consignees of arrival of freight, keeping seal records, handling freight accounts, checking freight, handling OS&D work, checking and quoting rates, selling tickets, making Pullman and coach reservations, checking and delivering baggage, keeping ticket accounts, preparing various daily, weekly and monthly reports by use of typewriter, and such other duties as may be assigned by Agent."

On August 23, 1962, Carrier's Superintendent wrote the incumbent of Cashier Position No. 2 as follows:

These findings are equally pertinent to the instant dispute and demand denial of the claims of the Employees.

For the reasons stated the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier abolished Cashier Position No. 2, New Smyrna Beach Agency, on August 24, 1962, and the duties thereof were performed by the Agent until October 11, 1962; and afterward by Clerk-Operators. Although the claim is general for the period up to October 7, 1962 and a continuing one thereafter, its principal objection is against the assignment of work covered by the Clerks' Agreement to the Agent, who is a supervisory employe, and not covered by any agreement.

The Organization's argument is based upon the Scope and Seniority Rules which, it claims, require that the work involved here be performed by Clerks. The Scope Rule is, however, general in nature, listing the classes of positions covered but not delineating the work to be done. We have frequently held that where such Scope Rules apply the question of whether or not the work was reserved exclusively to the Clerks must be determined by resort to history and custom on the property.

The record discloses that H. G. Hinson, a former Agent at this post from 1926 to 1957, had performed clerical duties such as here involved from time to time. E. H. McLaughlin, Jr., Assistant Trainmaster stated that he, too, had performed such clerical duties.

The Organization disputes this evidence, offering statements by Clerks E. C. Simons, L. W. Webb and R. B. Schnee, directly contradicting it.

This Board has no means of evaluating such evidence, to determine which is truthful and which is not. We must say, therefore, that the Organization, whose burden it is to prove its exclusive right to the work involved, has not met that burden with convincing proof.

Although it is unnecessary to the decision herein, we note that the Agent assumed the duties while he was instructing and preparing three Clerk-Operators who took over the duties after October 11 to fill out their day's work. What was involved was the temporary assumption of clerical duties by a supervisor until replacement employes could be trained. There are many decisions by this Board which hold that clerical duties may be assigned to Clerk-Operators to fill out their days, including Award 13964 only recently decided and involving the same parties and location.

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 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 19th day of November 1965.