

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 22897
Docket Number CL-22745

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employes**

PARTIES TO DISPUTE: (Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the **Brotherhood** (GL-8663) that:

1. The Carrier violated the Agreement when it failed to call and allow Clerk M. J. Starling, West **Jacksonville** Yard, Jacksonville, Florida, to perform clerical duties while **being** performed by **W. K.** Martin, Terminal Trainmaster, on March 13, 1977.

2. The Carrier shall compensate Mr. Starling eight (8) hours at time and one-half for March 13, 1977.

OPINION OF BOARD: The **Employes** contend that on the claim date, when the Claimant was available (but not on duty) the Carrier allowed or permitted an **Assistant** Terminal Trainmaster to perform certain car checking duties.

The Carrier does not dispute that the Trainmaster made a list of cars, but it asserts that he did so as a track check for personal **information** and a line-up for a switch engine. Carrier denies that there is any evidence that the list was used for transferring cars, pulling way bills, or for any other purpose affecting clerical work.

Carrier concedes that there is an agreement violation when other than covered **employes** perform clerical work, and they urge that the record contains physical evidence to **show** an exact check by clerks **of three** tracks and a line-up on 11 others. We do not concur with the Organization's assertion that it makes no difference if certain work had already been performed by clerical **employes**.

The Carrier pointed out, during the handling on the property, that the list in question was not used for any clerical purpose, and further, that clerical forces **performed** appropriate work.

Resolutions of these types of disputes must relate to the actual facts surrounding the events. Here, while the matter was **under** review on the property, the Employes did not **deny** the assertions made by the Carrier and, accordingly, for the purpose of this case, we **must** accept them as controlling. The Employes have the burden of showing a violation and, although we **limit** our findings to this particular record, **we** are unable to find that the Employes have established their claim by an **evidentiary** showing.

FINDING: 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 apprwed June 21, 1934;

That this Division of **the** Adjustment Board **has** jurisdiction **over** the dispute involved herein; and

That the **claim will** be dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


A.W. Paulos
Executive Secretary

Dated at Chicago, **Illinois**, this 18th day of June 1980.