

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES
THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM.—

"Request of Guy L. Lee that the position of 'Night Watchman-Clerk', South Park Yard, Denver, be restored and that he be paid for all loss in wages."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"Effective with the close of business Monday, April 10, 1933, position of 'Night Watchman-Clerk', South Park Yard, Denver, was abolished. The following duties assigned to this position were taken over by the Burlington Refrigerator Express Company under their contract with The Colorado and Southern Railway, April 10, 1933:

"Carding Refrigerator cars, telephoning and waiting for engine.
"Checking ice.
"Telephoning refrigerator car numbers.
"Cleaning cars and wiring doors.
"Icing cars."

POSITION OF EMPLOYEES.—The employees contend that the Carrier violated the agreement of July 1, 1924, between the parties, by abolishing the position in question and contracting with the Burlington Refrigerator Express Company to take over and perform the duties assigned to the position, thereby denying employees covered by the agreement the right to perform work enumerated in the "Joint Statement of Facts."

In support of their position, Rules 1, 2, 3 (a), 3 (b), 4 (a) and 70 are cited:

"RULE 1. These rules shall govern the hours of service and working conditions of the following employees of The Colorado & Southern Railway Company, subject to the exceptions noted in Rules 1, 4 and 8.

"(1) Clerks, Ticket Clerks, and Ticket Sellers, except those whose positions are included in the Telegraphers' Agreement.

"(2) Other office and station employees—such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, operators of certain office or station appliances and devices, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors.

"(3) Laborers employed in and around stations, store houses, and warehouses.

"NOTE.—This agreement shall not apply to individuals where amounts of less than Thirty (\$30.00) Dollars per month are paid for special services which only takes a portion of their time from outside employment or business or to individuals performing personal service not a part of the duty of the carrier."

"RULE 2. *Definition of Clerk*.—Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, and statements and similar work, and to the operation of mechanical office equipment and devices in connection with such duties and work shall be designated as clerks.

"The above definition shall not be construed to apply to:

"(1) Employees engaged in assorting tickets, waybills, etc., nor to employees operating appliances or machines for perforating and addressing envelopes, numbering claims or other papers, adjusting dictaphone cylinders, and work of a like nature, nor to employees gathering and delivering mail or other similar work not requiring clerical ability.

"(2) Office boys, messengers, and chore boys or to other employees doing similar work.

"(3) Employees performing manual work not requiring clerical ability."

"**RULE 3. Seniority.**—

"(a) Seniority begins at the time employee's pay starts on the seniority district and in the class to which assigned.

"(b) Where two or more employees enter upon their duties at the same hour on the same day, employing officer shall at that time designate respective rank of such employees."

"**RULE 4. Promotion.**—

"(a) Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, the management to be the judge, subject to appeal, except, however, that this provision shall not apply to the following excepted positions:

"**NOTE.**—The word sufficient is intended to more clearly establish the right of senior clerk or employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

"**RULE 70. Duration of Agreement.**—This agreement shall be effective as of July 1, 1924, and shall continue in effect until it is changed, as provided herein or under the provisions of the Transportation Act, 1920. Should either of the parties to this agreement desire to revise or modify these rules, thirty (30) days written advance notice containing the proposed changes, shall be given and conference held on date mutually agreed upon.

"All schedules and agreements previously in effect are hereby cancelled."

POSITION OF CARRIER.—The Carrier contends the position was not abolished on account of the Burlington Refrigerator Express Company taking over the work in question, but on account of the falling off of narrow gauge team track work and general decrease in business, which made it necessary to re-assign yard clerk's work in Denver Yard, thus making a reduction in yard clerk force.

OPINION OF BOARD.—The joint check of work performed and time allocated to the various duties of the position in question show that when it was abolished April 10, 1933, there was but very little time devoted to the work described in the joint statement of facts. This check also shows that over 7 hours was allocated to duties which were discontinued entirely or re-assigned to other employees covered by the Agreement. Request for the restoration of position of Night Watchman-Clerk and that Mr. Lee be paid for loss of wages is not justified by the evidence.

The contracting to the Burlington Refrigerator Express Company of work formerly coming under the Agreement between the parties (in the instant case performed by Mr. Lee) constituted a violation of the Agreement, as decided by Award No. 360, Docket No. CL-334.

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;

That the request for restoration of position of Night Watchman-Clerk and that Mr. Lee be paid for loss in wages is not justified by the evidence, and

That the removal of work from the Agreement between the parties by contracting it to the Burlington Refrigerator Express Company constituted a violation of the Agreement, as decided by Award No. 360, Docket No. CL-334.

AWARD

Request of Guy L. Lee is denied, but for the reason stated in the last Finding, the work shall be restored to employees covered by the scope of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 25th day of January, 1937.