

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY
W. R. Kenan, Jr., and S. M. Loftin, Receivers.

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

"The Carrier has violated and is continuing to violate the Clerks' Agreement by assigning clerical work incident and necessary to the making of daily yard checks and demurrage reports of South Jacksonville Yard to employes not covered by said agreement, and further failing and refusing to assign such work to employes holding seniority rights thereto under the Clerks' Agreement; that such clerical work shall be restored to the scope of the Clerks' Agreement and assigned to employes, in accordance with the rules thereof; also claim of employes for all wage losses sustained as a result of such agreement violations retroactive to April 10, 1938."

EMPLOYES' STATEMENT OF FACTS: "Prior to June 6, 1926, the Carrier maintained yard office at South Jacksonville, and the checking of cars in that yard was performed by Yard Clerks. On June 6, 1926, the yard forces were transferred from South Jacksonville to the new terminals at Bowden, located approximately six miles south of South Jacksonville, but for some time after that the Carrier maintained positions of Yardmaster, several yard clerks and a telegrapher in the South Jacksonville yard office. In addition, there was an agency force located at that point. When the entire force of yard clerks was abolished at South Jacksonville, or transferred to Bowden, subsequent to June 6, 1926, the duty of checking cars in the South Jacksonville yard was assigned to one of the agency clerks. Later, the South Jacksonville agency was closed and the duty of checking cars in the South Jacksonville yard was assigned to the telegrapher located at that point, who continued to take care of this work until the South Jacksonville telegraph office was closed in September, 1930, at which time the yard clerk working on third trick at Bowden was assigned and did perform this service on overtime after completion of his tour of duty at Bowden. During the latter part of September, 1930, this work was removed from the yard clerk's assignment and turned over to yard watchman, with police authority, to perform, and has continued to be performed in this manner since that date.

"After the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes was certified as representatives of clerical and other employes on this property, and agreement negotiated and signed to become effective as of January 1, 1938, employes made request

"2. Under the request of the employes it would be necessary for a clerk in Bowden Yard Office to travel a distance of six miles and return, to make a memoranda of a few cars each day, which the yard watchman in the performance of his routine police duties makes in an average of less than one minute's additional time. The situation under discussion has prevailed for eight years, has not deprived any clerical employe of work, and has not operated to prevent the employment of additional clerical force as conditions require. Each season between November and May, as traffic increases, a number of additional clerks are employed in Jacksonville Agency and in Bowden Yard Office, to handle the winter-spring traffic, without disturbing the arrangement for this yard watchman to make these car memoranda, which conclusively establishes the fact that the arrangement does not operate to prevent the employment of additional clerks, as needed. There is nothing connected with the situation that would warrant sending a clerk a distance of six miles and return, to jot down the initials and numbers of an average of two or three cars a day, and practically follow in the footsteps of the yard watchman, who would make the same rounds and the same inspection of the cars, whether or not he recorded the car initials and numbers."

OPINION OF BOARD: A brief review of the history of the contract relationship between the parties is necessary to a proper understanding of the question presented in this case. The current agreement, out of which this controversy arises, became effective January 1, 1938. Prior to the current agreement, other agreements were in effect with another organization (a so-called company union) as the representative of the employes—the first dated June 1, 1921, later superseded by another agreement dated May 15, 1931. This latter agreement was superseded by the current agreement.

Sometime prior to April 10, 1937 the Brotherhood invoked the services of the National Mediation Board, alleging a representation dispute and as the result of this action the Brotherhood was, on April 10, 1937, certified as the duly designated and authorized representative of the "clerical, office, station, yard and storehouse employes." The agreement of May 15, 1931 continued in effect under the new representation until superseded by the current agreement.

The scope rule of the current agreement (Rule 1) states the classes of employes covered by the agreement. Rule 2 defines "clerical workers" and "machine operators" but the agreement does not specifically define the work to which it is applicable. That is left to be determined by the character of work generally performed by the employes covered by the agreement. The Brotherhood insists that the work in question is of that character and is therefore covered by the agreement. The parties agree that the work is now being performed by an employe not covered by the agreement. If, therefore, the work comes under the agreement, the agreement is being violated (See Award 753 and cases there cited).

The record shows that prior to June 6, 1926 carrier maintained yard offices at South Jacksonville and the work in question was performed by yard clerks which as a class are covered by the current agreement. On June 6, 1926 the yard forces were transferred from South Jacksonville to new terminals located at Bowden, approximately six miles from South Jacksonville, but for some time thereafter carrier maintained several yard clerks and a telegrapher in the South Jacksonville yard office and one of the clerks located there continued to perform the work in question. Later the South Jacksonville yard office was closed and the duty of checking cars in the South Jacksonville yard was assigned to a telegrapher located at that point. The telegrapher continued to care for this work until the South Jacksonville telegraph office was closed in September, 1930, at which time the work was turned over to a yard clerk working at Bowden, who performed this service for a few days on overtime after completion of his tour of duty at Bowden. During the latter part of September, 1930 the work was removed from the

yard clerk and turned over to the yard watchman who has continued ever since to perform the work except for about one year—from June, 1931 to June, 1932—when the work was performed by a clerk.

It thus appears that the particular work in question was not being performed by an employe covered by the agreement when the current agreement or the agreement of May 15, 1931 were executed, although the record does show that the work was restored to an employe covered by the preceding agreement for a period of approximately one year. Obviously similar work is performed at many other points on the property of this carrier but the record does not disclose by whom such work is performed. This is a material and necessary fact to a proper determination of whether this work is of a character generally being performed by employes covered by the agreement. If this work is of such character it is also necessary for the record to show the conditions, if any, under which work of this character may be transferred to employes not covered by the agreement.

If the work in question is of a character generally performed by employes covered by the agreement at other points on the property of the carrier and this point merely constitutes an exception the work in question is covered by the agreement unless the exception is one that is also generally recognized. On the other hand if work of this character was not generally performed by employes covered by the agreement at the time the agreement was executed, and is not now so performed, it does not fall within the scope rule of the agreement.

As the record is insufficient for a determination of these questions it is necessary to remand the case to the parties. It may be that the matter will dispose of itself upon determination of the above facts. Otherwise the parties may bring the case back with the facts developed.

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 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 case should be remanded in accordance with the Opinion.

AWARD

Case remanded in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of January, 1939.