

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

(Scott M. Loftin and John W. Martin, Trustees)

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

Cashier J. B. Kitchens, employed in the St. Augustine Freight Agency, be paid a call of three hours on November 27, 1942, because of an employee not covered by the Clerks' Agreement having performed work regularly assigned to Cashier J. B. Kitchens, and which has been performed by him on previous holidays.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. B. Kitchens is assigned to position of Cashier in the St. Augustine Freight Agency. His regular assigned duties include the preparation and rendition of Form 755, telegraphic car report. Cashier Kitchens was not called or permitted to compile this report on Thanksgiving Day, November 27, 1941, but it was compiled by the Agent, an employee not covered by the Clerks' Agreement.

POSITION OF EMPLOYEES: In support of this claim, the following rules of January 1, 1938 agreement are cited by the employees:

Rule 1

"These rules shall govern the hours of service and working conditions of the following employees subject to the exceptions noted below:

"Group (1) Clerks—(a) Clerical workers
(b) Machine operators."

Rule 3

"(e) Seniority rights of employees to vacancies or new positions, or to perform work covered by this agreement, will be governed by these rules."

Rule 45

"(a) Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis, at the rate of time and one-half.

"(b) In making overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is nec-

called to work for other reasons and performed service ranging from four hours to ten hours and fifteen minutes. There has never been an occasion when he was called to come to the office for the sole purpose of filling out a report which would require about two minutes work.

2. It is the position of the carrier that there has been no violation of the agreement, and, therefore, the claim is not valid. It is the further position of the carrier that the principle involved in this case parallels that which was considered in Award 1418 of the Third Division, National Railroad Adjustment Board, and which was again reviewed in Award 1554.

OPINION OF BOARD: Briefly the facts are as follows: The claimant employe, J. B. Kitchens, was the cashier employed in the St. Augustine Freight Agency. His assignment was six days a week. On those days he prepared telegraphic car report, Form 755. On Thanksgiving, November 21, 1941, this report was prepared by the Agent, an employe not covered by the rules. In other words, this work was performed only by the claimant employe on his regular assigned days and holidays, both previous and subsequent to the day in question.

This Board has just interpreted rule 45 (b) in Award No. 2043, Docket CL-2111, and held that it provides that an employe who is regularly assigned to a class of work for which overtime is necessary, will be given preference when such work entails overtime or entails work on Sundays or holidays. Since the only reasonable inference from the record is that this Form was prepared only by Kitchens, both prior and subsequent to this date, it follows that the above rule was violated on that date.

The carrier contends that because like work is performed at other points by employes not covered by the current agreement, it may be assigned to the Agent at the St. Augustine Freight Agency. It may be that at these points this work was not done exclusively by the clerk, but that is not the fact in this case. Therefore, this Board disagrees with this contention. See Award 751.

The Board holds that the current agreement was violated when the carrier permitted the work in question to be performed by one not within the agreement.

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 carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of November, 1942.