

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

BROOKLYN EASTERN DISTRICT TERMINAL

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

1. The Carrier violated the Clerks' Agreement when it abolished two (2) checker's positions, located at Building 10-E, North 10th Street, and in the Krider Bldg., on the corner of Kent Avenue and North 9th Street, Brooklyn, N. Y., and turned the work over to Trucking Companies, and

2. The Carrier violated the Clerks' Agreement when it required or permitted and continued to require or permit, employees of trucking companies, "outsiders" who hold no seniority rights under the clerks' agreement, to come into the buildings and perform clerical work, such as checking, receiving and delivering freight, into and out of its freight houses (buildings), beyond the tailgate of the vehicle, all of which clerical work beyond the tailgate of the vehicle is that covered by the scope and operation of the clerks' agreement and was performed by employees classified, listed and rated pursuant to the agreement provision since its inception, and

3. That Mr. B. Champlin and Mr. J. Dodd, Checkers, shall be returned to their former positions and all affected employees, qualified to perform the work of checking, receiving and delivering freight, who are listed on the Group 1, 2 or 3 seniority rosters, shall be compensated for wage losses retroactive to January 24th, 1942.

EMPLOYEES' STATEMENT OF FACTS: On January 24th, 1942, the following letter was addressed to Mr. B. Champlin, Checker, North 10th Street, Brooklyn, N. Y.—

"Dear Sir:—

This is to inform you that the position of checker, at your present location, Building 10-E, North 10th Street, has been abolished as of this date.

Yours truly,

(Signed) T. F. Smith,
General Agent."

On or about May 27th, 1939, a similar notice was addressed to Mr. J. Dodd, Checker, who was located in the Krider Building at the corner of Kent Avenue and North 9th Street, Brooklyn, N. Y. Since that time the

cupying leased space at Section "E" North 10th Street to other space including Section "B," North 8th Street, the employment of a checker at Section "E," North 10th Street, was and is no longer required.

(2)—That the volume of business for various tenants which prior to June 11, 1938 had occupied leased space in the so-called "Krider" Building had gotten so low that ALL of the freight owned by such tenants, excepting one was on that date loaded into ONE freight car and transferred to leased space in other buildings at which a checker was and still is employed. With the transfer of these accounts from the Krider Building to other buildings, no work which required the continuance of a checker remained at the Krider Building. Position held by Checker J. Dodd, was, therefore, abolished and he exercised his displacement rights on a position held by a junior employee.

(3)—The Carrier makes this positive statement—that there are absolutely no employees of trucking companies—or any other outside companies—performing work for the Carrier in Section "E" of the North 10th Street Building or in the Krider Building—or in any other building of the Brooklyn Eastern District Terminal—which was formerly (or ever has been) performed by employees of the Brooklyn Eastern District Terminal subject to the schedule agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. The Carrier has never received any report or been given any record of or order for any freight in either of these buildings by any employee of any trucking company or any other outside companies since the checkers were removed to other locations. The Carrier has delivered and checked into leased space the freight as ordered by consignees and with that operation has fulfilled its carrier obligation and is in no way whatsoever interested in what may happen to such freight or any record or report covering such freight after that delivery is completed.

(4)—The Carrier maintains that the situation obtaining in disputes on the Missouri Pacific Railroad covered by Third Division Awards Nos. 1647, 1648, 1649 and 1650—cited by the employees to support their claim (Exhibit No. 1)—is NOT comparable to that obtaining on this property. No work belonging to, or which was ever performed by, employees subject to the Clerks' Agreement on the Brooklyn Eastern District Terminal has been farmed out (contracted) to ANY outside agency, nor is such work being performed by employees of outside companies.

(5)—Every employee on the roster of Brooklyn Eastern District Terminal with the exception of those who have been furloughed to enter the Armed Forces of the United States are holding regular assigned positions and with the exception of these men Brooklyn Eastern District Terminal does not have any furloughed employees, consequently, no employee has suffered any loss.

OPINION OF BOARD: The claims are predicated on the theory that others than employees holding seniority rights under the Clerks' Agreement are employed to perform work, at the buildings in question, falling within the scope of the Clerks' agreement.

The work in controversy is the handling of freight between the buildings and the tailgate of trucks. The claimants contend that such work falls within the scope of the Clerks' agreement and in support of their contention cite Awards Nos. 1647, 1648, 1649, 1650 and 2006.

We do not think the principle upon which those awards were made is applicable to the facts established by the record in the instant case.

It appears from the record here that the carrier leases space in the buildings in question to consignees; that freight is handled by the carrier from car to leased space. Admittedly this work falls within the scope of the

Clerks' agreement and is performed by employees holding seniority rights under that agreement. When the freight is placed in the leased space the carrier has no responsibility for or control of its further handling. Upon delivery to the leased space the freight comes under the exclusive control of the lessee. Whom the lessee may employ to handle it from the leased premises to the tailgate of the truck is of no concern of the carriers. That is an operation under the exclusive control of the lessee. Since that is not an operation of the carrier the work connected with it does not fall within the scope of the Clerks' 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 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 no violation of the agreement is shown.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1943.