

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the system committee of the Brotherhood that:

1—The Carrier violated the rules of the Clerks' Agreement effective November 1, 1936 by assigning clerical work in Waycross, Ga. shops to foremen and other mechanical employees not covered by the Clerks' Agreement.

2—That clerical positions shall be bulletined in Waycross, Ga. shop clerical seniority district in sufficient number and at proper rate of pay to absorb the clerical work being done by employees not covered by the Clerks' Agreement.

3—That the employees covered by the Clerks' Agreement working in Waycross shops seniority district shall be paid the number of hours shown in joint check made on May 22 and 23, 1942 and if there is insufficient employees entitled to this work in accordance with the rules that assigned employees be paid for the remaining number of hours in accordance with rule 52 of the Clerks' Agreement, from April 19, 1941 until the rules of the Clerks' Agreement are fully complied with.

EMPLOYEES' STATEMENT OF FACTS: "Report of joint check of actual work of a clerical nature that is alleged as being done by Foremen—Waycross Shops:

"Said check made by L. C. Westberry, Chief Clerk to Master Mechanic and H. A. King, District Chairman for the Clerks' Committee, on May 22 and 23, 1942.

"CASE NO. 1—Locomotive Shop Foreman F. L. Bell and Loco. Shop Gang Foreman E. Crews. Post time cards, Form 256, for men under their supervision; answer correspondence and does own filing; writing Forms 407-orders for material—and Form 861 for material to be shipped; works details and information on shop order work, Form 3213-A—average time required per day for both foremen—two (2) hours.

"CASE NO. 2—E. L. Spicer, Erecting Shop Foreman—posts time cards, Form 256, for employees in the Erecting and Pipe Shops; writes all requisitions, Form 407; makes

work and that is exactly what they are trying to do. On the other hand, it is recognized any work that should be allocated to employees within the Clerks' Agreement will be assigned to such employees.

As previously mentioned, when it was found that clerical work to the extent of thirteen hours and thirty minutes per day was being performed by employees not under the Clerks' Agreement, immediate steps were taken to correct this situation. Two clerks were assigned to work eight hours daily except Sunday, which was really two hours and thirty minutes more clerical help than was justified at the time. The clerical forces at Waycross Shops have been increased in almost exactly the same proportion as other forces; therefore, if we had the proper amount of force in December, 1929, and no complaint was made, certainly there is no justification for complaint at this time when forces have been restored, the clerical employees in approximately the same ratio as other employees.

The Carrier submits that all work that should be allocated to employees within the Clerks' Agreement has been assigned to such employees; that additional clerical employees were assigned as soon as it was shown that they were necessary, and contends that the claims in the instant case are without merit and should be declined.

OPINION OF BOARD: This claim is based on the alleged violation of the Clerks' Agreement in that the Carrier assigned clerical work in the Waycross, Georgia, Shops to foremen and other mechanical employees not covered by the Clerks' Agreement.

On April 19, 1941, complaint was made to the Carrier that shop foremen and mechanical employees in the Waycross shops were doing clerical work in excess of 30 hours per day and requested that a joint check be made to determine the facts. After considerable delay, a joint check was had which indicated that the 23 foremen and mechanical employees shown in the joint check were doing clerical work to the extent of 31 hours and 20 minutes daily. The record also shows that this work had been performed previously by Mechanical department clerks covered by the Clerks' Agreement. The Carrier, being dissatisfied with the result of the joint check, made an independent investigation and concluded that there was only 13 hours and 20 minutes daily work that could properly be allocated to the clerks and in December 1942, two additional clerks' positions were established to absorb this work.

The Scope Rule of the Clerks' Agreement has many times been interpreted literally as describing the class of work only, that it does not purport to reserve all clerical work to clerks, and that seniority rules merely control the disposition of the work available to the clerks. See Award 615. This was announced as a rule of necessity for, as has been often said in the Awards of this Division, there are few employees, if any, who do not perform some clerical work in connection with their regular duties. The result is that the nature of the work alone is not sufficient from which to determine whether it belongs to the clerks. The relationships and circumstances surrounding the questioned work are of first importance in arriving at a correct conclusion. And yet, the contract itself certainly contemplates that there is work falling within the Agreement which the Agreement protects. The controlling view is that the Clerks have the right to perform all clerical work in the absence of a definite exclusion. To interpret the Agreement otherwise would be to give it unilateral effect wholly to the advantage of the Carrier.

It is the rule established by this Division that a foreman or other employee may properly perform clerical work incidental to his regularly assigned duties. Such work is treated as excluded from the Clerks' Agreement. But when such clerical work becomes too burdensome, it may not then be assigned to employees other than clerks. The joint check appearing in the record has been

carefully examined and the conclusion reached is that the clerical work performed by the foremen and mechanical employees therein mentioned was incidental to their assigned duties. It clearly had to do with their own work and, under such circumstances, the amount and nature of the clerical work done is of no import. It is not violative of the Agreement. See Award No. 2138.

It is urged that as the work was once performed by clerks that it cannot be taken from them except by negotiation. This Division has not adopted this view. A review of Awards 931 and 1694, among others, leads to the conclusion that if the clerical work of a foreman becomes too great for him to perform it, it may be assigned only to a clerk, and when the amount of clerical work abates so that the foreman can perform it himself, it can be turned back to him without violating the Clerks' Agreement. Consequently, the fact that the work was formerly performed by clerks under the Clerks' Agreement is of no import in the present case. The correctness of this statement is demonstrated by the reasoning contained in Award No. 1314 wherein it is said: "Where the duties incidental and normal to a position not under the craft flow out directly to an assistant included in the agreement and taken on when work increased to a point where such assistance was necessary, it would seem that by the same token they could ebb back directly to the original position when the necessity for the assistance no longer existed, provided the duties so involved in the ebb and flow were such as were indigenous to that position—normal and incident to it." See also Award No. 931.

Much is said in the record concerning the joint check made by the parties. The General Chairman insists that the Carrier is bound by the result of the joint check. The effect of the joint check requires clarification. The joint check indicates the amount of clerical work being performed by the foremen and mechanical employees in the Waycross Shops. The Carrier does not dispute the correctness of the joint check. It simply contends that the clerical work listed therein can properly be performed by foremen and mechanical employees and that the clerks, therefore, have no exclusive right to it. The affidavits indicating that all this clerical work was proper to be performed by clerks undoubtedly states the fact, but to the extent that such evidence purports to decide that it is the exclusive work of clerks, it is in error. The persons designated to make the joint check were charged with determining the facts; the application of the contract to the facts remained with the Carrier with a right of appeal to this Board. The Carrier was in no way bound by the interpretations of those engaged in the joint check, purporting to fix the liability of the Carrier under the Agreement.

The Clerks' Organization contends that the Carrier has acknowledged the correctness of their claim to the extent of 13 hours and 30 minutes clerical work each day. To a certain extent this is true. In assigning 13 hours and 30 minutes work each day to clerks, the Carrier is more aptly described as finding that such an amount of work exists in excess of the capacity of the foremen and mechanical employees to perform. This excess work belongs to the clerks from the time the Carrier determines that it exists. But this does not mean that it is exclusively the work of the clerks in the sense that it could not be performed by the foremen and mechanical employees to whose work it was incidental if they had the capacity to do it.

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 the work claimed by the Clerks was incidental to the work of the employees performing it and consequently it does not constitute a violation of the Clerks' Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of October, 1943.