

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the carrier violated and continues to violate the clerks' agreement—

1—When on January 8, 1940 the Carrier arbitrarily appointed Mr. Eugene Tate to a clerical position with the title of Assistant Chief Tie and Lumber Supervisor.

2—That this position shall be bulletined and filled in accordance with the existing Clerks' Agreement.

3—That Mr. R. S. LeGwin shall be paid the difference between his compensation and the rate of the Assistant Chief Tie and Lumber Supervisor.

EMPLOYES' STATEMENT OF FACTS: A position with the title of Assistant Tie and Lumber Supervisor was created in the Purchasing Agent's office at Wilmington, N. C. on January 8, 1940 which position worked for sometime and was abolished. This same position was re-created about Feb. 1, 1941 and filled by the appointment of Mr. H. McEachern whose seniority dating as a clerk is Feb. 16, 1923. Mr. R. S. LeGwin made request for this position and Mr. LeGwin's seniority date is April 12, 1922.

The Carrier contended that the position was an official one and the re-creation of position formally filled by Mr. C. D. Yarborough.

POSITION OF EMPLOYES: There is in effect an Agreement between the parties bearing effective date of November 1, 1936 from which the following rules are quoted:

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.

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

employed twenty-eight Traveling Inspectors, but they were reduced over the years until only five remained in 1933, this number being increased to thirteen at the present time. The office force at Wilmington for some years consisted of four clerks and one stenographer, but one of these clerical positions was abolished in June, 1932 and has not been restored. Thus it will be seen that we now have 25 per cent as much supervisory force, 46 per cent as many traveling inspectors and 80 per cent as much clerical force as we had in the pre-depression period.

As shown above, the Supervisory forces were reduced over the years until August, 1935 when only one remained—the Chief Tie and Lumber Supervisor. During the lean years we managed to continue our operations with the reduced force, but with the gradual increase in purchases it was found necessary to re-establish the position of Assistant Chief Tie and Lumber Supervisor in order to provide supervision over the department's increased responsibilities. This position was re-established in January, 1940 and has continued to date.

Now with respect to the claim of the Clerks' Committee. There is nothing in the record to show where the supervisory forces have absorbed any work covered by the Clerks' Agreement. While it is not admitted that during depression years clerks may have exercised in a few instances the duties of a supervisor, the Carrier submits that were such a fact, it would not prohibit any clerk from relinquishing such minor supervisory duties when such duties had grown to the extent as to warrant the appointment of an additional supervisor. It is useless to argue that operations requiring two system and six line of road supervisors up until 1931 without complaint from anyone and then to contend that the supervision required at that time would be unnecessary in 1940, certainly when it is shown that in 1940 we only employed 25 per cent of the number of supervisors as were employed in the earlier period.

It is the Carrier's position that there is no merit in this claim and it should be denied.

The respondent reserves the right if and when it is furnished with the ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition, and which have not been answered in this, its initial answer.

OPINION OF BOARD: The question presented by this record is whether the occupant of the position of Assistant Chief Tie and Lumber Supervisor is a clerical worker within the Scope, Rule 1, of the current Agreement. Rule 1, so far as here material provides as follows: "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."

It is conceded that the position about which this dispute centers is not within the exceptions to Rule 1. The question, therefore, is simply whether the occupant of this position is a "clerical worker" within the meaning of the Agreement.

It is clear from the record that the occupant of this position does considerable clerical work. However, it has been repeatedly held by this Division that the fact that an employe does clerical work is not conclusive upon the question of his status as a clerical worker within the meaning of Agreements similar to the Agreement here involved. Many awards of this Division have referred to the fact that almost every employe and official of a carrier, from the President down to the laborer, performs some clerical work in connection with his regularly assigned duties. The rule has been established that if the clerical work performed is simply incidental to a position not covered by the

Agreement, that the performance of such clerical work does not classify the employe as a clerical worker within the coverage of the Agreement. Awards 806, 1405, 1418, 1554, 1689, 2091 and 2138. The question must be determined by the duties performed by the occupant of the position.

The record discloses that prior to the year 1930, the carrier maintained in the Tie and Timber Department a number of supervisory positions, none of which were covered by the Clerks' Agreement. In the years of depression these positions were gradually abolished until in 1935 only one supervisory position remained. It is the Carrier's contention that the position here in dispute, which was established in January 1940, was simply a restoration in part of the abolished supervisory positions, made necessary by the increase in business. We believe the record supports this contention. The record fairly establishes that the occupant of the position is vested with supervision of the office and road forces, authorized to make contracts covering the purchase of timber products, authorized to supervise the cutting of timber on the Carrier's property, and generally vested with the same duties as the Chief Tie and Timber Supervisor who was unable to perform all of the work when the volume of business increased. We are of the opinion, therefore, that the occupant of this position is not a clerical worker as that phrase is used in the Agreement. His duties are primarily supervisory in character, and the clerical work is incidental to his supervisory duties.

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 employe involved in this dispute are respectively carrier and employe 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 has been shown.

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 November, 1943.