

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY
COMPANY**

(L. F. DeRamus and Holman D. Pettibone, Trustees)

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that the Carrier violated its Agreement with the Brotherhood when, effective November 1, 1944 and with recurring regularity subsequent thereto, it removed the station laborer's work, consisting of handling, sorting, unloading and loading U. S. mail to and from trains and loading of mail into mail storage car set on station spur track at the Crawfordsville, Indiana, passenger station, from the scope and operation of the Clerks' Agreement and permitted the assignment of such work to be performed by Maintenance of Way employes, Messrs. Barker, Covault and Billingsley at that point, who hold no seniority rights under the Clerks' Agreement on an overtime and/or call basis following their tour of duty as section laborers at the section men's penalty rate of pay of 96 cents per hour, and

(2) That the Carrier, by reason of the violation, shall be required by appropriate award and order to compensate Stores Department laborer, J. J. Gertzen of Lafayette, Indiana, with seniority date of January 12, 1926, in Seniority District No. 2, at his penalty rate of 96 cents per hour for each and all hours paid Messrs. Barker, Covault and Billingsley, as set forth below, for the work involved beginning November 1, 1944, and ending August 27, 1945, when the work was discontinued.

November 1944	— A. Barker	— 51 hrs. @ 96c	— \$48.96
December	— A. Barker	— 57½ "	— 55.20
January 1945	— A. Barker	— 72 "	— 69.12
February	— A. Barker	— 61½ "	— 59.04
March	— A. Barker	— 72 "	— 69.12
April	— A. Barker	— 52½ "	— 50.40
May	— A. Barker	— 81 "	— 77.76
	— T. Covault	— 14 "	— 13.44
June	— A. Barker	— 80 "	— 76.80
	— T. Covault	— 16 "	— 15.36
	— F. Billingsley	— 2 "	— 1.92
July 1945	— A. Barker	— 62 "	— 59.52
August	— A. Barker	— 56 "	— 53.76
Total.....		677½ hrs. @ 96c	\$650.40

The sole matter involves the handling of routine U. S. mail which is brought direct to our trains as such, the loading of which is the responsibility of the Post Office Department, except for the magazines and catalogues which were stowed in baggage cars set on side track at Crawfordsville. In the case of magazines and catalogues, the Post Office messenger placed them in the doorways of the baggage car and the stowing was performed by the section men which on the train is performed by the joint messenger train baggage-men and the R.P.O. clerks. This occurred only a few times during the period of the claim and involves only 66 hours out of a total of 677½ hours claimed by the Organization.

It must be kept in mind that this dispute does not involve a claim where anyone of the craft belonging to the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees has lost anything, either in the way of money or work. The work performed by the section man or men each night that they worked only amounted to from 4 to 25 minutes per train or a total of less than one hour per night in the aggregate. It was simply a case of helping the Post Office messenger handle the mail in an effort to minimize train delay. The Clerks' have none of their craft working at Crawfordsville and it was inconceivable to call a man from Lafayette Shops, 29 miles away, to handle the work, hence, in the emergency the section forces were utilized.

The Carrier submits that the mere reading of facts in this case will show the illegitimate nature of this claim, and rejects it for its actual triviality.

The Carrier respectfully requests that the Board deny the claim.

OPINION OF BOARD: On a date prior to November 1, 1944, the Carrier found it necessary to assign an employe to assist in the handling of mail on night trains at Crawfordsville, Indiana, to eliminate excessive train delay. The Carrier assigned A. Barker, a Maintenance of Way employe, to perform the work. At times, two other employes were assigned to assist Barker. The Organization contends that the work belonged to the Clerks and that the Contract was violated when it was assigned to Maintenance of Way employes. On August 27, 1945, the night trains here involved were scheduled as day trains which eliminated the work constituting the basis of the dispute.

Crawfordsville is a one-man station, the only regularly assigned employe being the Agent. Claimant holds seniority as a Clerk in the Stores Department at Lafayette, Indiana, a point 29 miles from Crawfordsville, and in the same seniority district. Claimant states that he was available to perform the work by traveling to and from the work by automobile.

It is a fundamental principle often announced by this Board that a carrier violates the collective agreement when it uses employes of another class or craft to perform work within its scope at a time when employes entitled to perform it under the agreement are available. Awards 1646, 2052, 2232.

It is the contention of the Carrier that the work was not within the scope of the Clerks' Agreement. This argument is based on the fact that the work was primarily that of United States Postal Employees. The record is clear, however, that it was performed to eliminate station delay, a matter of benefit to the Carrier. The employes used were paid by the Carrier and, in our opinion, were performing essential service to the efficient operation of Carrier's trains. We think it was work "in and around stations, storehouses and warehouses" as those words are used in the scope rule of the current Clerks' Agreement. This being true, the work belongs to Clerks if there is an employe under the Clerks' Agreement available to perform it.

The Carrier contends that Claimant was not available to perform the work. The record shows that Claimant was regularly employed as a Laborer and Truck Driver in the Stores Department at the Lafayette Shops which are located 29 miles north of Crawfordsville. His assigned hours are from 7:00 a.m. to 3:30 p.m. He was required to perform considerable overtime during

the period involved. The work at Crawfordsville, here involved, was usually performed between the hours of 1:00 a.m. and 3:00 a.m., later if the second train was running late.

We would agree with the position of the Carrier if the work was emergent in character. But such was not the case here. It had more the aspects of a standing call. We think the Carrier under such circumstances was obligated to tender the work to the Clerks in that seniority district before assigning it to Maintenance of Way employees. Awards 3220, 2686, 2387, 2386. Its failure to do so under the circumstances here shown constitutes a violation of the Agreement and an affirmative award is required.

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 Agreement was violated as charged.

AWARD

Claim sustained except for December 20, 1944, July 10 to 16, 1945, both dates inclusive, and August 15, 1945, when claimant was not available.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1946.