

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**

FLORIDA EAST COAST RAILWAY COMPANY

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

The Carrier violated the provisions of Rule 44 of the Clerks' Agreement when it established Position No. 3074, Clerk-Stenographer, in the office of Chief Train Dispatcher, New Smyrna Beach, December 14, 1946, with hours of assignment 5:00 P. M. to 1:00 A. M.

EMPLOYEES' STATEMENT OF FACTS: On December 14, 1946, Superintendent of the carrier issued Bulletin No. 714-C1, advertising position No. 3074, Clerk-Stenographer, Chief Train Dispatcher's office, New Smyrna Beach, with assignment daily except Sunday and holidays 5:00 P. M. to 1:00 A. M., with the following described duties:

"The duties of this position will consist of stenographic work, checking train, engine and yard service time tickets, compiling various form reports and posting of records."

Vacancy in this position was advertised by Bulletin No. 23-C-1, January 17, 1947 with same hours of assignment. On January 30, 1947, District Chairman of the Brotherhood protested to the Superintendent hours of assignment on this position, and after the Superintendent advised the District Chairman that he could not understand what was wrong with the assignment, the District Chairman wrote the Superintendent on March 4, 1947, as follows:

"Referring to your letter of February 4, 1947, file 30-C1, which is in reply to my letter of January 30, 1947, regarding the assigned hours of position No. 3074, clerk-stenographer, in the Chief Train Dispatcher's office, in which you say that you are at a loss to understand what I think is wrong with this assignment and desire that I make my position clear.

We do not feel that the assigned hours of this position are in accordance with the second paragraph of Rule 44 of the agreement. You will observe that this rule provides that 'No other shift will have a starting or ending time between twelve o'clock midnight and 6:00 A. M., except when necessary to meet the requirements of the service.'

When this rule was negotiated, it was made very plain that the portion which permits the ending of assignments between 12 mid-

assignments necessary. The suggestion was accepted on that basis, which is stated in the Rule in very clear language, and the text of the Rule contains the full agreement with respect to the starting time of positions. While in the hearing the Board Members asked many questions dealing with the arrival and departure times of trains at various stations, in the conference of the Railway and Employee representatives on June 8, 1946 these questions were not discussed and had no bearing whatever on the Rule as accepted. There was no suggestion made by the Employee representatives that the rule they were suggesting would limit its application to any certain positions, and if such a suggestion had been made, the Railway representatives most certainly would not have accepted the rule. The rule, as above stated, expresses a simple limitation in clear words, and is not restricted to certain jobs.

Further evidence that such a restriction was not intended is found in the fact that no such restriction is contained in the rule. The parties to the rule were certainly capable of reducing their intentions to a rule text and the fact that the rule contains no such restriction is full evidence that none was intended. The employees did not even propose it because they knew the Railway would not agree to it.

2. Even if the Employees had "thought it was clearly understood that" the exception—when necessary to meet the requirements of the service—"contemplated assignments that were necessary to the operation of train and yard service" as the General Chairman contended in his letter of June 4, 1947, it is difficult to understand how they arrived at the conclusion that it would not apply to positions in a Train Dispatcher's Office. Certainly there is no office more essential to the operation of trains, and the handling of instructions and reports connected therewith. Such an office is responsible for the expeditious movement of trains at all hours of the day or night, for the distribution of cars through the medium of those trains at all hours of the day or night, and for the maintenance of continuing records of the movement of trains and distribution of cars in accordance with Law, Governmental regulation and the rules of the Railway. Passenger, mail and express traffic must also be handled on a twenty-four hour basis.

3. A day in a train dispatching office closes at 12 o'clock midnight. At that hour the business of the office must be summarized in reports to the required Government Agencies and the Management, and records for the new day started. For this reason two stenographers were required in the Chief Train Dispatcher's Office at New Smyrna Beach during the Winter Season of 1946-1947 between the hours 11:00 P. M. and 1:00 A. M. Furthermore, stenographic service in the office was most certainly necessary between 5:00 P. M., when the incumbent of Position No. 8 went off duty, and 11:00 P. M. when the incumbent of Position No. 15 went on duty. The three positions could not be assigned as three consecutive shifts because, as has already been stated, the services of two stenographers were necessary at the closing time of the office's business day. The assignment of Clerk-Stenographer Position No. 3074 at the time in question was, therefore, necessary to meet the requirements of the service, and under the provisions of Rule 44 the Railway had the right to so arrange it.

The claim is without merit and should be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: Position No. 3074, Clerk-Stenographer, Chief Train Dispatcher's Office, New Smyrna Beach, assigned 5:00 P. M. to 1:00 A. M., except Sundays and holidays, was bulletined with the duties of the position described as follows:

"The duties of this position will consist of stenographic work, checking train, engine and yard service time tickets, compiling various form reports and posting of records."

The Organization contends that this assignment is in violation of the starting time rule which provides:

"Where three consecutive shifts are worked covering the 24-hour period no shift will have a starting or ending time between twelve o'clock midnight and 6 A. M.

No other shift will have a starting or ending time between twelve o'clock midnight and 6 A. M. except when necessary to meet the requirements of the service."
Rule 44, current Agreement.

The Organization contends that the exception "except when necessary to meet the requirements of the service" was understood at the time it was agreed upon to mean assignments that were necessary to the operation of train and yard service. No such interpretation or exception can be read into the rule. The rule agreed upon and all negotiations leading up thereto, must be considered as merged in the rule accepted. Its wording is clear and definite; and will be applied in accordance with its terms.

The Carrier states the reason for the assignment terminating at 1:00 A. M. is that it is necessary to make reports to Management and Government Agencies at the close of the day's business at 12 o'clock midnight. These reports cannot be finally completed until after the close of the day's business at that hour. It would seem, therefore, that service requirements could be met only by completing the reports immediately after midnight. We cannot say that the Carrier abused the discretion lodged with it by the controlling rule under these circumstances.

The Organization urges that a Clerk-Stenographer was working 11:00 P. M. to 7:00 A. M. and that the occupant of this position could have performed the work. But if the occupant of this latter position was fully occupied during his tour of duty, as the Carrier asserts, the Carrier would necessarily assign the work elsewhere. Consequently, we think the Carrier has shown that the service reasonably required that position No. 3074 terminate at 1:00 A. M. Under such circumstances the rule cannot be said to have been violated.

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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.