

Award No. 5619
Docket No. CL-5558

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that Carrier violated the Clerks' Agreement:

(1) When on or about December 15, 1949, it removed work consisting of two hours Night Watchman Service from work assignment of each of the second and third shift Night Clerks positions in the Oaklawn Stores Department, Danville, Illinois and assigned said work to employees without the scope (Rule 1) of our Agreement effective February 1, 1922, and amendment thereto by Memorandum Agreement dated June 19, 1945, effective July 1, 1945.

(2) That the Night Watchman Service as it existed immediately preceding December 15, 1949, be restored to employees within the Scope Rule of our Agreement and the regularly assigned, as of December 15, 1949, second and third shift Clerks, namely, W. L. Evers and L. S. Toy, (and their successors if there be any) be compensated for loss sustained resulting from Carrier's irregular removal of work normally attached to their assignments, namely, two hours each per day, rate \$1.43 per hour, retroactive to December 15, 1949, and continuing each day thereafter until the Night Watchman Service is restored to employees within the Scope Rule of our Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is employed in the Carrier's Stores Department at Danville, Illinois, among others, two regularly assigned Night Clerks, rate \$1.43 per hour each.

The second shift position is assigned to Mr. W. L. Evers, hours of service, 3 P. M.—11 P. M.

The third shift position is assigned to Mr. L. S. Toy, hours of service, 11 P. M.—7 A. M.

Copy of statement from one of these employees setting forth in brief form the normal duties assigned to his position prior to December 15, 1949 is attached hereto as Employees' Exhibit 1.

Their normal assignment required that each make a tour of the entire Stores Department buildings and punch a time clock once each hour at

"A true watchman for a building is one whose services are constant watching or patrolling of a particular building or contiguous group of buildings. 48 Fed. Supp. 98.103."

The simple act of checking four fire control locations, requiring not to exceed sixty minutes time within a spread of eight hours, cannot be construed as a " * * * constant watching or patrolling of a particular building * * *" defined by the courts as a true watchman. Again it is pertinent to point out that the entire shop area is guarded and patrolled by police department employes. Consequently, no watchman service was necessary nor required of the storeroom clerks.

Within the guarded area here in question the Carrier maintains a voluntary fire guard composed of employes from the several departments. The activities of this voluntary fire guard are directed by a committee composed of representatives of the employes and management. It is a duty required of all employes working within the shop area to be on a constant watch for fires, and to report any conditions that may lead thereto. This is required of employes in all grades and classes of service. A check of fire control locations may be required of employes in any class of service, and, as shown by the record, has never been assigned exclusively to any one group; however, as a matter of convenience this check has generally been made by Police Department employes during their patrol of the shop area.

It is the Carrier's position that the checking of fire control locations under the circumstances of this case does not constitute "watchman" service within the intent and meaning of the clerks' agreement. The building is located within a guarded area where constant police patrol is maintained. No watchman service was needed nor required of the storeroom clerks and no clerk has suffered monetary loss as a result of the alleged violation.

The Carrier submits that the claim is not supported by the schedule rules and should be denied.

It is affirmatively stated that all data contained herein has been handled with the representatives of the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are the holders of two regularly assigned night clerk positions, hours 3 P. M. to 11 P. M. and 11 P. M. to 7 A. M. at Carrier's Stores Department at Danville, Illinois. The preponderance of the duties of these positions involved the checking of materials and tools to roundhouse employes. Prior to December 15, 1949, during the course of their assigned hours Claimants were required to check and punch time clocks at four fire control locations, three at the storeroom and one at the oil house. Effective December 13, 1949, after complete dieselization and construction of a new diesel repair shop the stock of diesel repair parts was transferred into the new repair shops. The work location of the Claimants was then changed to the new shops and thereafter they were required to make only an occasional trip to the Stores Department. The work of checking and punching the clocks at the four fire control locations was thereafter taken over by Carrier's police department. Employes claim a violation of the Scope Rule of the Clerks' Agreement and cite particularly that portion of the Scope Rule of the Agreement which reads as follows:

"Positions or work within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules except in the manner provided in Rule 84."

The undisputed history of checking fire control locations in the Oaklawn Shop area of which the four locations at the Stores Department and Oil House here involved are a part is as follows:

In June, 1922, the checking of all fire control locations within the shop area was performed exclusively by the Police Department; commencing in October, 1937, Store Department Clerks on the second shift began check-

ing the storeroom fire control locations and the police checked them on the third shift. In 1943 a third shift clerk position was put on and the checking was done by the occupant thereof along with his other duties. This latter arrangement with the two night clerks on the second and third shifts checking the fire control locations in the storeroom and oil house and the police department checking the fire control locations at twelve other points in the Oaklawn Shop area continued until the initiation of the change indicated in the first paragraph of this opinion.

It is apparent that the disposition of this claim turns upon the determination of whether or not the work of checking the fire control locations and punching the clocks located thereat in the storeroom and oil house is work coming within the Scope of the Clerks' Agreement. The Scope Rule of the instant Agreement does not describe work as such. In accordance with numerous holdings of this Board recourse must be had to custom, tradition and practice to determine the work reserved to the classifications of employees listed in the Scope Rule. It is apparent that until 1943 the work of checking and punching clocks at the storeroom and oil house locations was not performed exclusively by clerks. It was performed by both the police and the clerks as incidental to their regular duties. Thus, it was then in the category of that type of work which was described in Award 2551 as work which may be incidental to the duties of various classes of employees. The fact that in 1943 the work was assigned to the third shift clerk who performed it in place of the Police Department employee did not change its essential character. Although no more Police Department employees actually checked the involved locations, the fact that the checking and punching of clocks at other fire control locations was performed by the Police Department employees is evidence of the incidental nature of that type of work in connection with the duties of both classes of employees. It is, however, contended by the employees that when the Agreement was revised in 1945 and the classifications of station, storehouse and warehouse watchmen were added to the Scope Rule of the Agreement, the work then came under the Scope of the Agreement. We cannot agree with this contention for the reason that the incidental character of the work never changed. The Police Department continued to perform the same type of work at the other locations with the night clerks just checking at the four locations mentioned and no positions of watchmen were even established at the Oaklawn Shops area. We are obliged to hold, therefore, that the work involved was not covered under the Scope of the Agreement and the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1952.