Award No. 5730
Docket No. CL-5606

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, 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 of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated the Clerks' Agreement:

1. When it abolished three laborer's positions in Group 3 at Moncrief Yards, Jacksonville, Florida, on June 4, 1949, and transferred scheduled work of bleeding air and closing box car doors out from under the scope and operation of the Clerks' Agreement and assigned such work to employes not covered thereby, and

2. That the three (3) senior (unemployed, extra or unassigned) laborers listed upon the Class 3 Seniority Roster, District No. 1, Jacksonville, Florida, be compensated for wage loss sustained, less amounts earned in other employment, if any, for each day, retroactive to June 4, 1949, the date the work was removed from the scope and operation of the Clerks' Agreement.

3. That the Carrier be required to return such work of closing doors and bleeding air at Moncrief Yard, Jacksonville, Florida, to the scope and operation of the current Agreement between the parties, by assigning such work in accordance with the rules thereof.

Note: The individuals entitled to receive payment of claims in each instance to be determined by a joint check of the Seniority Roster and payrolls.

EMPLOYES' STATEMENT OF FACTS: For a great number of years employes covered by the Clerks' Agreement have been performing the work of bleeding air and closing box car doors at Moncrief Yard, Jacksonville, Florida, and various other locations on the Carrier's property. In 1936 this work was specifically included in the Clerks' Agreement and has remained under the scope of the Agreement between the parties since that time. Prior to June 4, 1949, there was one laborer employed on each of the three tricks who did nothing but bleed air and close doors during his eight hour tour of duty.

Employes' Exhibits "A", "B", and "C" are affidavits from Laborers E. Monroe, J. H. Hebrew, and Claude N. Gibson certifying that prior to June 4, 1949, they were assigned to positions designated as air bleeders at Moncrief Yards and were assigned to bleed air, uncouple air hose on cars arriving in the Yard, and close doors on empty cars leaving the Yards. Their entire

tion when it was restored, while the other two elected to remain at the freight agency.

Carrier is in a quandry as to paragraph 3 of the Employes' "Statement of Claim" which asks that the work of bleeding air be returned to the scope and operation of the current agreement by assigning such work in accordance with the rules thereof. This claim was appealed to your Board on April 18 and prior to that date, all three of the air bleeder positions had been restored. This surely must have been known to the Clerks' Organization. However, Carrier's action in restoring these positions was not in any manner prompted by any recognition of the Employes' contention that they should be restored, in accordance with their claim, but was prompted solely because of the need for the positions, and, as was understood on June 22, the work was given to Group 3 laborers subject to the provisions of the current Clerks' Agreement.

What is really being sought by the Organization in the progressing of this claim is a new rule which it has not been successful in negotiating on the property, i.e., a Classification of Work Rule, guaranteeing to Group 3 laborers the performance of air bleeding and door closing duties and related laborers' work. This in itself is recognition by the Organization that there does not now appear in the current agreement such a Classification of Work Rule. This Board has many times held that its duties are to interpret the existing agreements as written by the parties and not to write a new rule. It is respectfully requested that your Board adhere to that oft-times announced policy and decline the claim of the Employes, as it is not founded upon any violation of the current agreement, and, therefore, is entirely lacking in merit.

The respondent carrier 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.

Data in support of the Carrier's position have been presented to the Employes' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is advanced by the System Committee of the Brotherhood for and on behalf of certain laborers, hereinafter called Petitioner, in Group 3 at Respondent's Moncrief Yards. The Petitioners claim that on or about June 4, 1949, they were the holders of certain jobs whose work was specifically included in the Clerks' Schedule and at such time Carrier abolished said jobs and transferred the work to employes not within the aforesaid Schedule. The work in question is described as bleeding air and closing doors. In particular, Petitioner avers Carrier's act as aforesaid is repugnant to Schedule Rules 1, 2, 3, 4, 18, 77, and 81.

Rule 1 in Award 1418 is similar to Rule 1 of the Schedule before us. That Award held such a rule does not enumerate the kind of work to which the Agreement applies but only enumerates the type of employes covered by the agreement. Accordingly, we find the work in question was not negotiated into the Schedule before us.

The record is conflicting in regard to whether the Petitioners did all of the work in question during the time they were employed. It is not necessary to decide whether they did or did not, see Award 2175. The question then arises whether such work was incidental to the regular work of those employes who did do it. Petitioners assert originally employes other than laborers performed the work in question. Carrier asserts for many years yard employes performed the work and that the extent of its operations controlled the selection and discharge of Petitioners.

We think this case falls within the rule set out in Award 2334 which states "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."

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 Employes involved in this dispute are respectively Carrier and Employes 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

Carrier did not violate the Schedule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 17th day of April, 1952.