

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the effective Agreement when, on July 28, 1953, and thereafter, and on January 10, 1955, and thereafter, it arbitrarily removed certain work, hereinafter described, from Clerks fully covered by the effective Agreement and assigned such work to an employee in a separate seniority district and "excepted" from Agreement Rules, and

(b) The Carrier shall now be required to compensate Claimants Mr. W. H. Bartlett, Mr. J. S. Gardner and Mr. A. E. Stephens, their substitutes or successors, at proper rate of time and one-half for two hours each day beginning July 28, 1953, and for fifteen (15) additional minutes each per day, beginning January 10, 1955, and continuing until such time as the violation shall have been corrected.

EMPLOYEES' STATEMENT OF FACTS: Claimants are Clerks (Group 1) employed by the Carrier in the office of Superintendent Dining Cars, Atlanta, Georgia. The office constitutes a seniority District (Employees' Exhibit "A").

On August 4, 1953, employees holding seniority in the office or seniority district of Superintendent Dining Cars, Atlanta, Georgia, complained to the Division Chairman that work regularly assigned to them had been taken from them and was being performed by and sent directly to the Clerks holding seniority in a separate seniority district (Employees' Exhibit "B"). It subsequently was made to appear, in conference, that the work in question had not been transferred to Clerks covered by the Agreement in another seniority district (Washington, D. C.), but was being performed by an employee not covered by the Agreement, Mr. Durrett, Supervisor of the Officers Dining Room, Washington, D. C.

Claim was duly filed on August 11, 1953 (Employees' Exhibit "C") and was amended on April 5, 1955 (Employees' Exhibit "N").

The Local Chairman reasons that since claimants were extending prices on 16 requisitions during their eight-hour assignments (which constituted only a part of their regular duties), they should receive fifteen minutes overtime because they are now handling only 15 requisitions.

SUMMARY

In the handling of this claim with the Carrier, employe representatives alleged a violation of the agreement, but they could not cite a single rule or provision of the agreement in support of their contention.

The transfer of the Asheville and Washington requisitions to Superintendent Noack's office, Washington, D. C., in July 1953, did not involve a sufficient amount of work to justify either the abolishment of a clerical position in the Atlanta office or the establishment of a position in the Washington office.

Claimants continued, after July 1953, to work the same number of hours and to perform the same preponderating duties, and suffered no loss of compensation.

The evidence of record does not justify an affirmative award, and Carrier respectfully requests that the claim be denied.

All pertinent facts and data used by the Carrier in this case have been made known to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The central office and main commissary of Carrier's Dining Car Department are located at Atlanta, Georgia. All employes covered by the clerical agreement in this department are located in the Atlanta office, under the jurisdiction of the Superintendent of Dining Cars at that location. All dining cars operating into and out of Atlanta are supplied by the Atlanta commissary. There are also secondary commissaries at Asheville, N. C., and Washington, D. C., each being in charge of a Dining Car Agent. These commissaries are under the jurisdiction of both the Superintendent Dining Cars in Washington and the Superintendent Dining Cars in Atlanta.

Prior to July, 1953, requisitions covering orders for dining car supplies filled by Dining Car Agents at the Washington and Asheville commissaries were mailed to the Superintendent Dining Cars, Atlanta. On each requisition filled the Agent indicated the weight or amount, and the rate (unit price) of each item supplied. The Clerks in the Atlanta office extended the prices on these requisitions, and also on the requisitions filled at the Atlanta commissary, and checked or verified the requisition data. These documents were then forwarded to the Auditor of Disbursements in Washington, D. C., for charging to proper accounts and further handling by clerical employes in that office.

In July, 1953, the Carrier instructed the Dining Car Agents at Washington and Asheville to mail their requisition forms to the Superintendent Dining Cars in Washington, instead of to Atlanta. Upon receipt of the requisitions under this new arrangement, according to the Carrier, the Superintendent examines the requisitions for such information and handling as he deems necessary with the commissaries. He then refers the requisitions to his assist-

ant, who extends the prices. The requisitions are subsequently transmitted to the Auditor of Disbursements as previously. The noted Superintendent's assistant is a supervisory employe not covered by the Clerks' Agreement. Clerical employes at Atlanta have continued to extend prices, etc., on requisitions filled at the Atlanta commissary as heretofore. Group 1 Clerks in the Superintendent Dining Car's office at Atlanta comprise a separate seniority district.

The claim as originally filed on the property protested the removal of work from the subject seniority district in Atlanta, but was based upon the assumption that said work had been transferred to the seniority district representing clerical positions in the Auditor's office in Washington. During the processing of the claim the Carrier advised that the disputed work was being performed in the office of the Superintendent Dining Cars in Washington, rather than in the Auditor's office. We do not think the error in the petitioner's original information constitutes a fatal defect in the claim. Both parties were in possession of substantially all of the pertinent facts prior to the submission of the dispute to this Board, so that neither can claim surprise. The ex parte submission of each party is addressed to whether the transfer of the disputed work to the excepted supervisory employe is barred by the Clerks' Agreement.

In appealing the dispute to this Board the Organization revised the claim by requesting an additional 15 minutes' pay at time and one-half for the same claimants, on the ground that additional requisitions were being handled in Washington instead of Atlanta. We deem it unnecessary to consider whether this part of the claim is procedurally defective, since in any event we find it to be lacking in merit. The record shows that the additional work loss alleged amounted to a disappearance of work. The dining car on Train 30 no longer operated out of Atlanta. The change in operation of dining car service, which need not be reviewed here, did not result in the filling of an additional requisition at Asheville.

It is clear from the record, and is conceded by the Carrier, that clerical work traditionally performed by employes subject to the Agreement was transferred to an employe outside the scope thereof. We have no reason to doubt Management's statement that the rerouting of the Asheville and Washington commissary requisitions was made solely for reasons of operational efficiency. We agree that the Carrier is under an obligation to operate as efficiently as possible. This obligation does not excuse removing work from the scope of the agreement, however. Carrier has done so in this instance. We therefore hold that the disputed work must be returned to the Agreement.

With respect to the claim for pay, we accept the Carrier's statement that the disputed work performed by the excepted employe in Washington averaged no more than one hour per day, this work consisting of extending prices. There is no showing that he also performed other related work which the claiming employes state they formerly handled. We therefore conclude that Claimant Bartlett, his substitutes and/or successors, is entitled to one hour's pay, but at pro rata rate, for each day worked beginning July 28, 1953, until the violation is corrected. The duties of the position held by this claimant included the extending of prices. The claim for pay for the other claimants cited must be denied, unless they substituted for or were successors to Claimant Bartlett, since they did not perform this task at the time the dispute arose.

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 Carrier violated the Agreement.

AWARD

Claim sustained in part in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of March, 1959.