

Award No. 11603

Docket No. CL-11323

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

BROWNSVILLE AND MATAMOROS BRIDGE COMPANY

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

(a) Claim that the duties performed by Mr. P. Orive are clerical and come within the scope of the Clerks' Agreement.

(b) Claim that a position under the Clerks' Agreement be established to perform this work and such position be bulletined as required by Rule 6.

EMPLOYEES' STATEMENT OF FACTS: On January 25, 1957 (Employees' Exhibit "A") the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees was certified as representatives of the employees on the Brownsville and Matamoros Bridge Company by the National Mediation Board, Case No. R-3132.

Failure on part of the Carrier and Clerks' Organization to reach an agreement on rules and working conditions, an application was made for the services of the National Mediation Board. (Employees' Exhibit "B").

In cooperation with the services of the National Mediation Board the Carrier and Organization reached an agreement on July 12, 1957, as to rules and working conditions, copy of which is on file with the Board and is hereby made a part of this submission.

Rule 1 reads—Scope.

"These rules shall govern the hours of service and working conditions of the following classes of employees whose headquarters and principal duties are within and confined to the United States:

Senior Toll Collector

Toll Collectors

Watchman

Janitors

Storehouse and Warehouse Foremen, Checkers, Tallymen, Deliverymen, Ticket Clerks, Yard Checkers, and Crew Dispatchers.

(b) Clerical work in excess of three (3) hours shall not be assigned to more than one position on the same shift not classified as a clerk.

(c) The above definition shall not be construed to apply to the Group 2 or Group 3 employees listed in Rule 5."

As your Board said in Award 806, and we quote:

"As this Division has previously pointed out, there are few, if any, employees of a carrier from the president down to the laborer who do not perform some clerical work in connection with their regularly assigned duties."

On the basis of the record as set forth hereinabove the contention of the Employees should be unqualifiedly denied.

The substance of matters contained herein has been discussed in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION IF BOARD: The facts are not in dispute. On January 25, 1957 the National Mediation Board certified the Organization as "duly designated and authorized to represent for the purposes of the Railway Labor Act, the craft or class of Clerical, Office, Station and Storehouse Employees, employees of the Brownsville and Matamoros Bridge Company, its successors and assigns." Thereafter, on July 12, 1957 the parties entered into an Agreement, the Scope Rule of which reads as follows:

"Rule 1. These rules shall govern the hours of service and working conditions of the following classes of employees whose headquarters and principal duties are within and confined to the United States:

Senior Toll Collector

Toll Collectors

Watchmen

Janitors

or any combination of two or more of the foregoing classifications.

NOTE: If any additional positions are established within the craft or class of clerical, office, station and warehouse employees the rules governing the hours of service and working conditions of such employees will be subject to Rule 6 and further negotiation between the parties signatory hereto."

Five employees were originally covered by the Agreement. On September 1, 1958, the Company employed P. Orive. The Organization contends that he was employed as a clerk and is covered by the Agreement. The Company

states that he was employed as an Assistant to the General Manager, Guerra, who is not covered by the Agreement. On September 29, 1958 the Company wrote to the Organization's General Chairman, in part, as follows:

"The duties of Mr. Orive will be essentially the same as Mr. Guerra's, and he will be in charge of the entire bridge operations when it is necessary for Mr. Guerra to be off the bridge properties. He will not take over any duties or work of the present toll collectors or do any accounting or clerical work which is not presently being handled by Mr. Guerra. In view of this situation it is my opinion that his work does not fall in the category as outlined in agreement between the Bridge Company and your organization."

At the request of the Organization, a joint check of Mr. Orive's duties was made, and it was agreed that his clerical duties "consumes an average of approximately five hours per day." This check was made on January 14, 1959. On January 17, 1959 the Company wrote to the Organization's General Chairman, in part as follows:

"As was pointed out to you during the discussion at Brownsville January 14, Mr. Orive on occasions when General Manager Guerra is absent is empowered to and does assume full authority and responsibility of the general manager. Such authority includes, if any when necessary, the employment, dismissal or administering of discipline to employees included in and covered by the July 12, 1957 Agreement."

* * * * *

"Mr. Orive is performing no service that was not performed by Mr. Guerra prior to establishing the position of assistant to the general manager, nor is he performing duties other than those incidental to the positions of general manager. The duties are more or less interchangeable and performed by both Mr. Guerra and Mr. Orive. In the absence of Mr. Orive, Mr. Guerra assumes and performs the duties being performed by Mr. Orive."

The Organization argues that the joint check of Mr. Orive's duties clearly establishes the fact that Mr. Orive is performing work "in the craft or class of clerical, office, station and warehouse employees." His was not a supervisory position.

We cannot agree. First, the record shows that either Guerra or Orive are on duty every day of the year. Second, Organization has produced no facts on the property or in the Ex Parte Submission to show that Orive's duties were different from Guerra's duties. Nowhere in the record does the Organization deny that "Mr. Orive is performing no service that was not performed by Mr. Guerra prior to establishing the position of assistant to general manager." Third, in the absence of such denial and positive proof to the contrary, we are obliged to assume that Mr. Guerra, too, performed clerical duties on an average of about five hours a day when he was on duty. Fourth, Mr. Orive had the right to hire, discharge and discipline employees.

Mr. Guerra, as General Manager, was not covered by the Agreement. It is established that Mr. Orive performed the same duties as Mr. Guerra, and had the same supervisory authority when he was on duty as Assistant to the General Manager. On the basis of the record Mr. Orive was a supervisor who is not covered by the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1963.