

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

**CENTRAL OF GEORGIA RAILWAY COMPANY (M. P.
CALLAWAY, TRUSTEE)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employes that,

(1) The Carrier violated the Clerks' Agreement of September 1, 1944, when it failed and refused to assign clerical work as hereinafter specified to Yard Clerks, Columbus, Georgia, Columbus Division, Seniority District No. 4 (Columbus Yard Office), and that, therefore,

(2) Yard Clerk Mr. H. E. Harvey, Columbus Yard Office, Columbus, Georgia, shall now be paid for total of 51 ¾ hours' penalty overtime, at his regular rate of pay at the time of the violation.

EMPLOYES' STATEMENT OF FACTS: Under date of January 16, 1945, as per his file 175-32-A, SPECIAL letter was directed by Superintendent Mr. W. E. Dillard to General Yardmaster Mr. J. D. Bailey, attention Mr. Oscar Murray, Chief Clerk, copy to Mr. R. A. Brimm, Chief Dispatcher, exact copy of which is hereto attached and identified as Exhibit one and which is self explanatory.

This letter was in conformity with what had always been past practice with reference to movement of troops or material trains from Fort Benning, Georgia, a United States Training Encampment which has been located some fifteen (15) miles from Columbus, Georgia, for many years. Exhibit one, above, emphasizes the importance of having a clerk perform the involved work and makes no exception but specified: "every troop train."

However, on January 11 through January 17, 1945, a clerk was NOT sent to perform this work and effort made to turn this work over to Yardmasters and Switch Engine Foremen and the work involved in moving the 71st Division on the above dates was performed by Yardmasters and Switch Engine Foremen.

Attached hereto and identified as Exhibit Two is letter of protest from Vice General Chairman Mr. J. W. Railey under date of January 27, 1946, and which clearly sets forth the position of the Employes and what had been the past practice and which letter is self explanatory.

We therefore respectfully request that this Honorable Board sustain our claim in its entirety, our numerous efforts to secure a settlement thereof having been constantly declined and the Carrier having refused to acknowledge a violation of the Agreement or make a joint submission of the dispute to this tribunal.

CARRIER'S STATEMENT OF FACTS: Commencing January 11, 1945, through January 17, 1945, inclusive, there was a movement from Sand Hill, Georgia, (Fort Benning) of 35 trains of the 71st Division of the United States Army, eight of which were delivered to the Southern Railway at Columbus, Georgia, and the other 27 handled via the Central of Georgia Railway to Atlanta, via Macon and/or Raymond, Georgia. The consist of these trains was entirely passenger equipment, being baggage, kitchen, Pullman and troop sleeping cars, these cars being placed at Sand Hill for loading and moving into Columbus for movement over the Central of Georgia and/or the Southern Railway—all trains being handled in switch movement from Sand Hill to Columbus, a distance of approximately eight miles.

The Switch Engine Foreman, as is usual in switching cars, booked these trains into and out of Sand Hill to Columbus and turned the records over to Yard Clerks located in the Yard Office at Columbus, who made all necessary forms and reports, namely Forms 373 and 1042—Form 373 being an interchange consist report and Form 1042, placement and delivery card.

While it had been the practice at this point, whenever freight trains or mixed trains were involved, to send a Yard Clerk to Sand Hill—a loading and discharging point of the United States Government post at Fort Benning—to obtain records and seal freight cars, it had never been the practice to send a Clerk to this point when only passenger equipment was involved, as there is no necessity for seal and other records being kept on passenger equipment as required on freight equipment. All records made on the above named dates were turned over to the Clerks in the Yard and they performed all clerical work, the Switch Engine Foreman merely furnishing them with the car numbers.

POSITION OF CARRIER: There is no violation of the Agreement in this instance as no work was taken away from the Clerks by this handling.

The Carrier reserves the right to answer further whatever statements the Clerks may make in connection with this claim, as they have never, by correspondence, in conference, or by presentation to the Board in filing the claim indicated under what rule of the current Clerks' Agreement this claim is made.

Exhibits not reproduced.

OPINION OF BOARD: In this case the claim is for 51 ¾ hours penalty overtime for alleged failure to assign clerical work, under the Clerks' Agreement of September 1, 1944, and under interpretation thereof made by this Board.

The basic facts are not in dispute. The claimant is a yard clerk, Columbus Yard Office, Columbus, Georgia. At or near this point trains originating at Ft. Benning, and delivered to the Carrier at Sand Hill, some eight miles east of Columbus Yard, are there delivered by the Carrier to other lines. From Columbus Yards reports on all consists of military traffic are expected to be furnished the War Department of the United States Government, necessitating the making up of a record of the initials, number and kind of every car moving in traffic, and, in instances of freight or express traffic, the sealing of cars. At this point the dispute arises. Claimant contends that all this is clerk's work, and within the agreement, and, except for the period hereinafter dealt with, always performed by them; while the Carrier claims that only in cases where cars are required to be sealed is the help of clerks necessary, and that the Agreement is not violated, as in the instant case, when the train movements are troop trains and necessary equipment only.

On January 11 to 17, 1945, both inclusive, there was a heavy troop movement from Fort Benning, requiring the employment of a large number of troop trains. It is admitted that during this period Yard Clerks were not used in securing a record of the initials, numbers and kind of every car of the train movements. This work was done by Yard Masters and switch engine foreman in the Columbus Yards. On January 16, 1945, for reasons not clearly disclosed by the docket, the Carrier's Superintendent, W. E. Dillard, wrote to the General Yard Master at Columbus, the following letter:

"It will be necessary to designate a yard clerk to get the complete consist of every troop train coming in from Sand Hill and furnish it to Mr. Brimm immediately on or before the departure of the train. This is absolutely essential, as this information has to be wired to Washington and Savannah and we want some one to handle this who is thoroughly competent. Give the initials, number, and kind of every car."

It is not contended that this letter has a direct bearing on the pending dispute. It was probably not received until immediately before the ending of the practice complained of, and, no doubt, ended that practice. It is claimed, however, that it indicates what management considered the correct practice, from which claimant infers that the indicated correct practice had been followed at all times except the period from January 11 to 17, aforesaid.

This raises the important question in the case: Where Yard Clerks used, prior to January 11, 1945, in performing the work which Superintendent Dillard directed they should do by his letter of January 16, 1945. If so, then, clearly, they were entitled to do that work during the period of January 11 to 17—aforesaid. Too many awards of this Board sustain that statement as to leave the question open. On the other hand, if the Dillard letter inaugurated a new practice, a different rule would apply. On this point the Board is met with hostile contentions: One, that Yard Clerks always did that type of work, except during the period complained of; the other, that they were never called on to do such work where troop trains only were being moved, but only when it was necessary to seal cars in freight or express movements.

We think it fair to assume that the correct practice was that outlined in Superintendent Dillard's letter of January 16, 1945. We are confirmed in this by the letter of Record Clerk, R. M. Bentley, of the Columbus Yard, that "Mains delivered Southern Railway from Sand Hill (Fort Benning) do not even come into the yard" and he then goes on to state what was necessary to do in order to get the information which a Yard Clerk would furnish as routine. It appears that two reports were made up, forms 373 and 1042, the first by the train crew, the second by a Yard Clerk. Apparently, there was duplication of effort, but, for our purposes, that is not important. Superintendent Dillard evidently understood this, and sought to avoid it by requiring yard clerks to make the transfer reports, thereby relieving not only the Record Clerk in the Columbus Yards of the duty to report on the basis of telephone reports and otherwise, but yard masters and switch engine foremen as well. We can see no explanation of the Dillard letter other than that a deviation from the regular practice had occurred, calling for action on his part. He says that the course he directed was "absolutely essential", requiring some one who was "thoroughly competent" to perform it, and if so, it is unthinkable that a different practice had been permitted during the more than three years of active war which preceded his order. Moreover, his order placed no limitation on the character of trains and particularly refers to troop trains.

On the whole, we are of the opinion that in depriving the claimant of work which he or some other yard clerk should have been permitted to perform, the Carrier violated that part of Rule 1 of the Agreement which provides that:

"Positions or work within the scope of this Agreement * * * belong to the employees covered thereby * * *."

This is a pure penalty case. The claimant does not claim that he was deprived of work. The complaint is that the Carrier violated the Agreement and should be penalized therefor. We discussed this question at some length in Award No. 2282, written for the Board by this Referee, and it does not seem necessary to repeat or elaborate what was then said. Of the utmost importance is strict adherence to Agreements made in the processes of collective bargaining; and if inflicting an occasional penalty is necessary to impress this fact on parties to Agreements, the interests of all concerned are well served.

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 Employee involved in this dispute are respectively Carrier and Employee 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 agreement was violated in the manner charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *H. A. Johnson*
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1948.