

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS**

STATEMENT OF CLAIM.—

"Claim for restoration of Clerical positions in the Passenger Coach Yards as hereinafter described and identified, and that Clerks B. Moore, F. G. Mayer, J. E. Scott, and C. A. Touzinsky be restored to said positions and to the Clerks' Coach Yard Seniority District."

EMPLOYEES' STATEMENT OF FACTS.—Prior to June 22, 1936, there was maintained under the Clerks' Working and Wage Agreements the following classified positions, with titles, assigned hours, and rates of pay, and the clerks whose names are shown were the regularly assigned incumbents of such positions; Rankin Coach Yard, Yard Clerks B. Moore, and F. G. Mayer, hours 7:00 a. m. to 3:00 p. m. and 2:30 to 10:30 p. m., respectively, rate \$4.67 per day each; Jefferson Avenue Coach Yard, Yard Clerks J. E. Scott and C. A. Touzinsky, hours 6:30 a. m. to 2:30 p. m. and 2:30 to 10:30 p. m. respectively, rate \$4.67 each, per day.

The primary and principal duties and responsibilities assigned and required of these positions were: Record movement of all trains moving into, through and out of their yard territories; compile record of all changes in equipment of such trains; record and report all bad order equipment; handle all telephoned instructions regarding movements of equipment or changes in equipment; handle all correspondence connected with the operations of their particular yards; miscellaneous clerical duties as might be assigned by their supervisors; in the absence of yardmasters or switch tenders or in case of emergency, these clerks were required occasionally to assist in throwing switches and giving signals to trains moving by their offices.

The duty of assisting yardmasters and switch tenders was not required of these employees prior to the year 1933, except in cases of extreme emergency.

On June 22, 1936, the carrier, without notice to or conference with the duly authorized and designated representatives of the employees, nominally discontinued the above described clerical positions and arbitrarily removed same from the scope of the current agreement. In lieu of said clerical positions, the carrier issued bulletin notices under the rules of its labor agreement with the Trainmen's Organization, advertising four positions of switch tenders-clerks, with rate of pay of \$5.00 per day each. The assigned hours of service, duties and responsibilities of the four positions of switch tenders-clerks, remained identically the same as those of the four yard clerks' positions which were discontinued.

Clerks Moore, Mayer, Scott, and Touzinsky were instructed by their superior officers to remain on the four positions as classified and re-rated, but thereafter their names were carried on the Trainmen's seniority rosters. The carrier has failed and refused to restore the clerical positions to and comply with the rules of the Clerks' Agreement in maintaining the positions as classified, rated, and assigned, prior to June 22, 1936.

There is in evidence an agreement between the parties bearing effective date of February 1, 1922, and the following rules thereof have been cited:

The figures for these particular months are given for the reason that they were used in our submission to the First Division of the National Railroad Adjustment Board.

We contend that we are entitled to eight hours' work for eight hours' pay, and that inasmuch as there is not sufficient work for the employment of men of each classification, we can require one man to perform the work of both classifications provided we pay the higher of the two rates involved.

OPINION OF THE BOARD.—The record in this case clearly indicates that the carrier violated the existing agreement between it and the employees' organization when it discontinued the four positions covered by said agreement and at the same time created new positions covering the identical work, giving the employees a different title and placing them under another agreement. This change in classification took the employees out of the Clerks' agreement and placed their representation thereafter in the hands of another craft. This Board was confronted by an almost identical question when it rendered Award No. 382. In that Award the Board sitting with Referee Sharfman said:

"There can be no question but that the use of locomotive engineers in place of maintenance-of-way employees in the operation of these weed burning machines was a direct violation of the expressed terms of the agreement of May 25, 1931; and it is also clear that even apart from this agreement the work involved has been recognized by custom and practice to be work belonging to the maintenance-of-way employees and as not infringing upon the work of any other class of employees. * * * It is not within the jurisdiction of the Third Division to determine whether or not any rule of the carrier's agreement with the Brotherhood of Locomotive Engineers has been violated in the operation of these weed burning machines * * *. * * * the carrier should seek relief from the burdensome requirements of its agreement as thus interpreted through negotiation with all the parties involved."

It is the opinion of this Board that the work of the employees herein involved and the work of the same employees after they had been placed under the terms of a different agreement was largely clerical. We hold that the carrier had no right to take these positions out of the Clerks' agreement and place them under another agreement except by agreement of the parties properly negotiated and that in taking this action without such agreement the carrier violated its existing contract and agreement with the employees involved, especially the Scope Rule No. 1 and the Terminating Rule No. 68.

This Board recognizes the hardship which may result from a decision where the carrier is confronted by agreements or contracts with two organizations and with insufficient work to employ men coming under the two agreements. It seems reasonable to assume that through negotiations the carrier can deal with the interested organizations and relieve itself from this onerous burden. This Board cannot do otherwise than to interpret and apply the existing contracts.

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 agreement between the employees and the carrier has been violated by the carrier.

AWARD

The claim of the employees must be sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1937.