

**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 of employees (a) that assignment of clerical work, hereinafter described in the Main and O'Fallon Yards to employes not covered by the Clerks' Agreement (Watchman Special Service Department) is a violation of Articles I, II, III, and XI of the current Clerks' Agreement, and (b) that such clerical work shall be assigned to and performed by clerical forces holding seniority rights under Clerks' Agreement, and (c) that the senior furloughed Yard Clerk holding seniority rights to such clerical work shall be reimbursed for wage losses sustained retroactive to August 12, 1936."

**STATEMENT OF FACTS.—**The Carrier maintains a Yard Office known as the Main and O'Fallon Yards which is comprised of three separate switching districts known as O'Fallon Yards, Carr Street Yards and Florida Street Yards. These switching yards are comprised mainly of team tracks serving industries and patrons of the Company.

The O'Fallon Street Yard has a capacity of approximately 160 cars; the Carr Street Yard has a capacity of approximately 90 cars and the Florida Street Yard has a capacity of approximately 15 cars.

For the proper performance of clerical work in checking yards the carrier here involved maintained the following clerical positions:

- 1 Yard Clerk, 7 a. m. to 3 p. m.
- 1 Yard Clerk, 8 a. m. to 6 p. m.
- 1 Yard Clerk, 11 p. m. to 7 a. m.

The switching yards in which this work is performed are operated continually twenty-four hours a day. Cars are switched onto and out of these yards; cars are being placed on and taken off of industrial tracks and freight is received from and delivered to patrons of the Company throughout each twenty-four hour period. It is to be noted from the above listing of clerical positions that there is no regularly assigned yard clerk on duty from 6 p. m. to 11 p. m. During that time a special watchman, who has no rights under the Clerks' Agreement performs certain yard clerk's duties.

**POSITION OF EMPLOYEES.—**The employees contend that the carrier's action in having a watchman perform these yard clerk duties during the hours from 6 p. m. to 11 p. m. is in violation of the Clerks' Agreement. They cite Rule 1 which governs the hours of service and working conditions of clerks, Rule 4, which defines clerical employes as employes who devote not less than four hours per day to writing and calculating, making reports, etc., Rule 8 concerning seniority rights of clerks under this Agreement, Rule 12 which provides that new positions or vacancies will be bulletined for clerical employes, Rule 66, which provides that established positions shall not be discontinued and new ones created for the purpose of evading the Rules of rates of pay, and Rule 68, which provides that employes suspended on account of reduction of force will be given preference in filling vacancies.

They contend that the work here in question is clearly within the subject matter of the Clerks' Agreement and therefore it is a violation of these Rules and the Agreement to assign this work to a watchman not within the Agreement.

The watchman performs the following work:

- "1. Checking and making record of car numbers and initials of all cars set in the above mentioned yards.
- "2. Checking out lots of freight that may be called for between 6 p. m. and 11 p. m.
- "3. Makes a record of seals on all cars in the three yards mentioned.
- "4. Applies seals to all unsealed cars and makes record thereof.
- "5. Makes a check of and receipts for all freight and shipments received at the O'Fallon Street Yard between 6 p. m. and 11 p. m.
- "6. Checks and delivers to patrons of the Company freight called for after midnight. This check requires that a record be made of quantity of freight removed from the cars and the maintenance of a record of the license number of the truck and a signed receipt from the truck driver to whom the freight is delivered.
- "7. Maintains an ice record of all cars which are moving under refrigeration."

**POSITION OF CARRIER.**—The carrier contends that there is no violation of the agreement.

It is pointed out that there is a yard clerk on duty from 8 a. m. to 6 p. m. who is in charge of the yard and who makes all records and prepares data and mails all notices to shippers, etc. It is also stressed that there is a clerk on duty from 7 a. m. to 3 p. m. who tallies truck loads taken from cars and checks all inbound cars arriving, etc., and that there is a clerk on duty from 11 p. m. to 7 a. m. who tallies truck loads, etc. The carrier then states that the watchman tallies only truck loads taken from cars and checks inbound cars between 6 p. m. and 11 p. m. The claim is that there are only about six loads tallied from cars and four inbound loads received during this time. This the carrier argues is very little clerical work compared to the duties of the other yard clerks. It is stated that the one who works from 7 a. m. to 3 p. m. checks as an average 51 loads tallied from cars and 12 inbound cars received and the one on duty from 11 p. m. to 7 a. m. has six loads tallied from cars and 9 inbound cars received. These figures indicate that the bulk of the work takes place between 7 a. m. and 6 p. m. and that were it not necessary to check the yard nightly the carrier would not maintain a clerk from 11 p. m. to 7 a. m.

The conclusion the carrier reaches is that the yard work between 6 p. m. and 11 p. m. is so insignificant that they should be entitled to let a watchman do it.

**OPINION OF THE BOARD.**—Rule 1 is the scope rule of the agreement. It covers many classes of employees who would not ordinarily be called clerks. Among those employees are messenger boys, train announcers, gatemen, and laborers employed in and around the station.

Rule 4, which is known as the "qualification" or "classification" rule, applies to clerks and by its terms does not apply to other employees within the purview of the Clerks' Agreement. This rule classifies and defines; it in no way limits the effect of the scope rule nor the effect of other provisions of the agreement.

The question before this Board, stated in simple terms, is whether work which is properly the subject of the Clerks' Agreement can be assigned to an employee not covered by the same.

For a detailed discussion of the principle involved see Docket CL-45S, Award 458.

We conclude that the carrier has violated the rules in distributing work belonging to men included within the Clerks' Agreement to those without the same. We feel that the equity of the situation will be fully met if the parties determine through negotiation the actual extent of the violation and the amount of clerical work that has been taken from those to whom it should be properly assigned under the Clerks' Agreement and given to employees not included within the Clerks' Agreement. The work to which employees within the Clerks' Agreement are entitled should be restored to them. In our opinion, the work involved in this case is of such a nature as to come properly within the scope of the Clerks' Agreement. We, therefore, conclude that the claim of the employees must be sustained to the extent that it is found that work properly belonging

to the Clerk's Agreement is being performed by employees not within the scope of that Agreement.

**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 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 facts of record disclose a violation by the carrier of the operative agreement between the employees and the carrier.

#### AWARD

The parties are directed to determine through negotiation the actual extent of the violation of the agreement, and thereafter to restore to an employee, or employees, within the Clerks' Agreement all work properly coming within the terms of the same. Compensation is not to be awarded unless it appears that the extent of the work to which employees coming within the terms of the Clerks' Agreement have been deprived during the period of violation was such as to make necessary the employment of an additional clerk at regular hours.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

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

#### DISSENT ON DOCKET CL-459

The Referee in his "opinion of the board" in the award in this docket states: "For a detailed discussion of the principle involved see Docket CL-458—Award No. 458". To the extent that our dissent to that award applies to such principle and to the award in this dispute dissent is here registered for the same reasons as stated in our dissent to Award No. 458.

The principle discussed in Award No. 458 included as a final conclusion the statement that the "carrier could not abolish the position in question without distributing the work to other employees within the agreement". However erratic and conflicting with former opinion by this same Referee that principle is, as pointed out in our dissent to that award, it can have no influence as principle bearing upon the instant case for by record admitted by employees and carrier alike the watchman who performed the small amount of clerical work during the period 6:00 p. m. to 11:00 p. m. of his night watchman's services had always done such work, and there never had existed a position at that location during that period coming under the clerks' agreement. The fallacy of resting a decision in this case upon such premise is apparent to anyone having the least familiarity with the circumstances.

A. H. JONES.  
J. G. TORIAN.  
R. H. ALLISON.  
GEO. H. DUGAN.  
C. C. COOK.