

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Benjamin C. Hilliard, Referee

**PARTIES TO DISPUTE:**

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

**THE WESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim of System Committee of the Brotherhood that the incumbents of the second and third trick Yard Clerks' positions at Portola be compensated for wage losses suffered on December 13th to 18th, 1937, inclusive, account violations of agreement rules and that all other employes adversely affected by such violations also be compensated for monetary losses suffered."

**EMPLOYES' STATEMENT OF FACTS:** "The Carrier maintains at Portola, California a switching yard which is operated continuously 24 hours each day.

"Prior to December 13, 1937, the Carrier maintained three regularly established positions classified as Yard Clerks at this yard, commonly known and referred to as first, second and third trick Yard Clerks. These three positions of Yard Clerks were classified, rated, bulletined and assigned in accordance with rules of the Clerks' Agreement.

"In support of this allegation insofar as it relates to Second and Third Trick positions involved in this dispute we need only refer to carrier's bulletin dated Aug. 12, 1937, designated as Clerks' Circular No. 67-37 bulletining a permanent vacancy on the second trick position of Yard Clerk with assigned hours of 4:00 P. M. to midnight, 7 days per week, rate of pay \$5.11 (rate changed to \$5.51 under application of National Wage Mediation Agreement effective August 1, 1937), and further bulletining a temporary vacancy on the Third trick position with assigned hours 12 midnight to 8:00 A. M., 7 days per week, account regularly assigned incumbent having been granted leave of absence.

"Under date of December 13, 1937, the Carrier discontinued or nominally abolished the second and third Yard Clerks' positions. Advice of such action was contained in notice posted by Superintendent G. W. Curtis, dated at Elko, Nevada, December 13, 1937, reading as follows:

'Effective December 13, 1937, the following positions have been abolished:

- 1 First Trick Crew Caller, Winnemucca,
- 1 Second Trick Crew Caller, Winnemucca,
- 1 Second Trick Yard Clerk, Portola,
- 1 Third Trick Yard Clerk, Portola

G. W. Curtis,  
Superintendent.'

weeks. Inasmuch as Portola Yard was practically at a standstill, we reduced switch engine shifts and abolished the positions of second and third trick yard clerks. In order that the records and files in the yard office might be kept intact and in reasonably good shape pending resumption of service we maintained the position of first trick yard clerk from 8:00 A. M. to 4:00 P. M.

"Carrier maintains that the positions of second and third trick yard clerks were abolished in reality. This is disputed by employees and claim was made in behalf of the second and third trick yard clerks for the days clerks were not used between 4:00 P. M. and 12:00 M. N. and between 12:00 M. N. and 8:00 A. M. While, as stated herein, Carrier's through traffic was detoured over another carrier during the period involved in this dispute, Carrier operated into and out of Portola, a few light engines, work trains and locals, and yardmasters were required to make such records as were essential at the time of movement. All of the work performed by yardmaster on the shift between 4:00 P. M. and 12:00 M. N. in connection with these trains consumed between one hour and one hour and thirty minutes on each shift and the amount of time thus consumed by the yardmaster on the shift between 12:00 M. N. and 8:00 A. M. was even less. All of this work for the entire 24-hour period which was not essential exactly at the time of arrival or departure of the trains above mentioned was performed by the first trick yard clerk between 8:00 A. M. and 4:00 P. M.

"Carrier states emphatically that the discontinuance of the second and third trick positions in Portola Yard constituted abolishment in fact.

"Inasmuch as receipt of copy of President Harrison's letter December 18, 1939 is the first intimation given to Carrier it was the intention of the Clerks' Organization to appeal to your honorable Board in this dispute, we respectfully request opportunity of discussing and answering in detail, any statements made by employees in connection with this dispute and opportunity to submit evidence and arguments in connection with statements of the employees."

**OPINION OF BOARD:** This docket is typical of many. The carrier abolished positions when work contemplated therein continued notwithstanding. In the situation resulting, resort was had to the alternative of assigning the work to employees of an agreement in which it was not scheduled. That, we have said, and often emphasized, is not permissible. It follows that the claim should be sustained.

**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 applicable wage agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1940.