

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that certain work now being performed at Parkwater, Washington, Car Shops, is properly covered by the Clerks' Agreement, and should be performed by employees covered by said Agreement, based on Rule 1 of current Clerks' Agreement."

JOINT STATEMENT OF FACTS: "Car Shops and car repair tracks are maintained at Parkwater, Washington. There are also maintained at this point what are known as cleaning tracks where cars are cleaned. Minor car repairs are also made on these cleaning tracks.

"The Assistant Car Foreman and Leading Carman make a daily report as the work of repairing and cleaning cars progresses; this report shows whether the car is bad order or serviceable, if bad order it may show that car is to be moved to some other track. In the case of empty cars that have been made serviceable it shows whether a car is fit for loading a particular commodity such as grain, flour, dressed lumber, paper, fruit, etc. This report is primarily a Car Department report and is made a part of the Car Foreman's records. For convenience this report is made in duplicate on what is known as a switch list and a copy of it is given to the Yardmaster.

"Carmen, after making a final inspection of empty cars that have been made serviceable, make out and apply commodity cards to cars. Those cards show that the car is fit for loading a certain commodity.

"When empty cars have been properly cleaned and classified as to commodity suitability, the carman who applies the commodity cards, seals the car doors to insure that the condition of the cars will not be changed before they are set for loading. No record is taken of the seals that are applied."

POSITION OF EMPLOYES: "Employees contend that the work of checking tracks, making switch lists, making condition records and cards, carding and sealing cars is work covered by the Clerks' Agreement and should be done by employees covered by said agreement. Rule 1 is the scope rule and reads in part as follows:

"Employees affected—Rule 1. These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

- "(1) Clerks—
 - (a) Clerical Workers;
 - (b) Machine Operators.

Attached as Carrier's Exhibit 'B' are samples of commodity cards. These cards are applied after personal inspection by experienced carmen of cars that have been repaired and cleaned. These cards can be prepared only by the man who makes the inspection and it will be noted that there is a provision on these cards for the signature of the inspector. The preparation and application of these commodity cards to cars is work that is universally performed on the Northern Pacific Railway by carmen. The Employees are not contending that a clerk is competent to make the inspection and neither are they contending that a clerk should sign the card for the inspector. All that can be involved in this phase of the case is the application of the commodity card to the car. This is not clerical work but is work that is incidental to the carmen's duty and he is responsible for seeing that the proper card is placed on the proper car. Insofar as this phase of the Employees' contention is concerned, there is therefore no foundation for their claim.

"With regard to Item No. 3, namely:

'Sealing empty cars that have been made serviceable.'

The car inspector whose duty it is to check the repair and cleaning tracks after making the inspection of a car and determining that it is serviceable closes the car door and applies a seal to the door to insure that the condition of the car will not be changed before it is set for loading. No record is kept of these seals. In some places instead of using seals, a piece of wire is slipped through the door hasp; or other means are used to prevent the door being opened prior to the car being set for loading. There is no provision of the Clerks' Agreement which vests in that class of employees the right to perform such work.

"The Carrier has plainly shown that there can be no foundation for the claim that employees covered by the Clerks' Agreement should be assigned to perform the work in question at Parkwater."

OPINION OF BOARD: This case was originally submitted to the Board in the form of a Joint Statement of Facts. When the case was argued by the parties before the Board, many statements made by them were in such conflict that the Board requested the parties to make a joint check of the duties performed and the time consumed. Such joint check, bearing date of January 20, 1941, was subsequently filed with the Board, the material part of which is as follows:

"Yard clerk checks cars and makes record thereof of all cars on repair and cleaning tracks the first thing in the morning. The yard clerk makes check of Track 14, which is a cleaning track, in the afternoon. This track holds about 70 cars. These checks are used for yard office purposes.

"Assistant Car Foreman makes an inspection of cars on repair tracks commencing the first thing in the morning. These cars carry bad order cards which have been placed on the cars by the car inspectors. The Assistant Car Foreman checks these cars to determine the extent of repairs that are necessary and the commodity for which empty cars can be made suitable. The Assistant Car Foreman lists the cars on the repair tracks on Form 1884, Carrier's Exhibit 'A,' accompanying the joint submission. This list covers the cars which it is expected will be released that day. The Assistant Foreman designates the repairs to be made to the respective cars, and the writer-up man makes record of these repairs. The Assistant Car Foreman supervises the work on the repair tracks and several times per day makes an inspection of the cars and makes notation on Form 1884 when the cars are repaired. Form 1884 is cumulative and is not completed until the end of the day's work. A copy of Form 1884 is delivered to the Yardmaster at the end of the day's work, this copy

having been made by the Assistant Car Foreman during the progress of the day's work. The average number of cars passing over the repair track per day when this claim arose was 21, and when joint check was made in January 1941 was 11.

"The Leading Carman makes an inspection of all cars on the cleaning tracks the first thing in the morning. He lists the cars on Form 1884 and shows commodity cars are to be made ready for and size of cars other than regular box cars. The Leading Carman during the day makes periodical checks to determine the condition of cars on cleaning tracks and makes notation on Form 1884 of what his inspection develops. At the end of the day a copy of Form 1884 is delivered to the Yardmaster. During the day's work the Leading Inspector prepares Form 1884, copy of which is delivered to the Yardmaster. An average of 90 cars per day passed over the cleaning tracks at the time the claim arose, and an average of 104 cars per day passed over the cleaning tracks at the time joint check was made.

"The total number of cars passing over the repair tracks and cleaning tracks at the time claim arose was 111 and at the time joint check was made was 115. If Car Department men made a straight check of the cars on the cleaning and repair tracks, the time devoted to such work would vary from 1' to 1½', depending upon the number of cars on these tracks. To copy the information compiled on Form 1884 for the Yardmaster would consume approximately thirty minutes.

"The condition record referred to in the submission of this case pertains to listing the condition of the cars at the end of the day's work and the time devoted to this function is included in the time it would take to make copy of Form 1884 by a clerk for the Yardmaster.

"Making Commodity car cards: These are made by the Car Foreman, Assistant Car Foreman, or Leading Carman or by carman from inspection reports as work progresses during the day. They bear the name of the man who has inspected the car. From thirty to forty-five minutes per day is devoted by carmen to making out these commodity car cards. About seventy-five per cent of the cars passing over the repair and cleaning tracks are carded.

"Placing cards on cars and sealing cars is done by carmen. This consumes approximately one hour per day. This work is done intermittently during the day as cars are conditioned and are repaired or made ready for loading. No record is made of the seals which are applied. About seventy per cent of the cars passing over the repair and cleaning tracks are sealed.

"The time devoted to preparing cards for cars and for placing cards on cars and sealing cars was given by the leading carman who stated that these duties were not performed at one time or continuously and the times shown are his best judgment of the time devoted to such duties. The leading carman has performed similar duties for the past twenty-five years."

Thus the joint check shows that yard clerks, employees under the current Agreement, check and make records of cars on repair and cleaning tracks the first thing in the morning. The assistant car foreman makes an inspection of cars on repair tracks to ascertain the extent of repairs necessary and commodities for which empty cars can be made suitable. He does not make a check of the cars for yard office purposes for such check has already been made by the yard clerks. The joint check shows that the making out and applying of commodity cards to empty cars that have been made serviceable is done by the car foreman, assistant car foreman, or leading carman after they have been inspected by one of these men charged with the duty of inspecting these cars as to their condition.

The sealing of the empty cars that have been made serviceable, as shown by the Joint Statement of Facts, insures that the condition of the cars will not be changed before they are set for loading. No record is made of the seals applied.

The joint check shows that placing cards on cars and sealing cars is done by carmen and that both of these operations are conducted at the same time. This work is done intermittently during the day as cars are conditioned and made ready for service.

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 employes involved in this dispute are respectively carrier and employes 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 as contended by the petitioner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of June, 1941.