

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The carrier is violating the Clerks' Agreement at Harlingen, Texas by requiring or permitting the yardmaster to perform work covered by the Clerks' Agreement. Also

(b) Claim that all employees involved in or affected by the above agreement violation be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: The yardmaster at Harlingen, Texas regularly performs clerical work, including the checking of trains and yards, making switch list, checking and marking train lists and weighing cars.

POSITION OF EMPLOYEES: The employees quote the following rules in support of this claim:

Rule 1. Employees Affected

"(a) These rules shall govern the hours of service and working conditions of all of the following class of employees of the above named railroads and subsidiary companies now in existence or hereafter organized."

Group 1. Clerks, Machine Operators, such as typewriters, adding and calculating machines, bookkeeping, accounting, timekeeping and statistical machines, dictaphones, key-punch, teletype (except teletypes used exclusively in the transmission of messages and reports and located in offices which are equipped with telegraph facilities), and all other similar equipment used in the performance of clerical work or in lieu of clerical work.

Group 2. All other office, station and store employees, including office boys, messengers, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, telephone

forming the functions of a common carrier belongs to such classes of employees as are protected by its collective agreements with them." That principle applied in the instant case fully supports the claim of the employees.

We show in Exhibit R excerpts from several awards of this Division dealing with the question involved in this dispute. Several of those awards involve this carrier and this organization and in each instance our position was sustained.

The facts and evidence submitted in this claim disclose that:

1. The Yardmaster at Harlingen is performing clerical work. And
2. The carrier has full knowledge that such work is being performed by the Yardmaster. (Exhibits I, J, K, O, P, and Q). And
3. The carrier has recognized that the agreement is being violated (Exhibits O and P).

Therefore we ask that your Honorable Board sustain our claim.

CARRIER'S STATEMENT OF FACTS: On August 6th, 1941, a joint check was made covering work performed by Yardmaster at Harlingen, the result of which is contained in a letter to the General Manager, signed jointly by the Assistant General Manager of the Carrier and the General Chairman of the Organization. (Carrier's Exhibit No. 1.)

POSITION OF CARRIER: It is the contention of the carrier that the work performed by the Yardmaster at Harlingen as reflected by Carrier's Exhibit No. 1 is work in connection with regularly assigned duties as yardmaster; that it is work which he must necessarily perform in order to have sufficient knowledge of conditions which enables him to give proper supervision and instructions as to the performance of the duties by those he is charged to direct. All of the work listed in Carrier's Exhibit No. 1 does not come under the classification of clerical. The time devoted by the Yardmaster to all of the work listed does not exceed two hours per day.

The attention of Your Honorable Board is directed to Award No 806, the Opinion of which reads in part as follows:

"While this rule is a definite test for determining what work is clerical in character, the rule nevertheless requires interpretation in its application to individual situations. It clearly indicates that 'writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements' is the essence of clerical work. The rule just as clearly provides flexibility in its application by reference to 'similar work' and to 'the operation of office mechanical equipment and devices in connection with such duties and work.' To be classified under either of these categories, however, work must be reasonably incidental to the work which has been defined as the essence of the clerk's function. Moreover, it is to be remembered, Rule 4 does not encompass all clerical work performed in the service of the carrier. As this Division has previously pointed out, there are few, if any, employees of a carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties."

The work performed by the Yardmaster is not "writing and calculating incident to keeping records and accounts." Such work is performed by a Yard Clerk.

Upon the evidence herein submitted by the Carrier, Your Honorable Board is respectfully petitioned to deny the claim of the employees.

OPINION OF BOARD: This is a claim by the System Committee of the Brotherhood that the carrier is violating the Clerks' Agreement at Harlingen, Texas by allowing the Yardmaster at that point to perform work which the Committee claims should be performed in a position or positions under the Clerks' Agreement, and it seeks compensation for the employees in the positions affected.

After analysis of the record we have concluded that the determination of this claim is dependent upon the question of whether the duties which the claimant refers to as duties coming under the Clerks' Agreement but are being performed by the Yardmaster belong exclusively to the clerks' positions or are as well incidental duties of the Yardmaster.

The joint check of August 6, 1941 shows the details of the work the Yardmaster is doing which forms the basis of complaint. He receives from Conductors two copies of list of cars in trains, he marks copy of these lists showing where cars go and gives them to the Engine Foreman for the purpose of switching trains, he checks lists against waybills, by furnishing lists or verbally he tells Engine Foremen of empties to be withdrawn from industries, he directs Engine Foremen to look for empties, in going through the yard and observing empties he makes list of empties and directs Engine Foremen to move them, and he also makes turn-over in form of switch list to engines going to work where he is not on duty. Up to two months before the check he weighed cars when no Yard Clerk was on duty or when the Yard Clerk had left the yard on personal business, but this has been discontinued.

That these duties properly attach to the Clerks' positions cannot well be questioned, but may they also attach as incidental duties to the Yardmaster?

It appears that the duties described, if performed by a Clerk, would be performed under the supervision of the Yardmaster. It is therefore difficult to understand how such a small amount of clerical work performed by the Yardmaster in a department coming under his supervision can be considered other than as incidental to his position. The time according to the showing does not exceed one and one-half hours per day.

In this holding we are not considering the question of transfer of duties for the purpose of effecting the discontinuance of an established position. That question is not presented here. And further this is not a precedent for determination of a claim where a Yardmaster is performing duties attaching Clerks' positions for the majority of the working days of the month for three hours or more. It may be that if the Yardmaster were performing three or more hours in this work for the majority of the working days of the month that the Committee would have to right to insist upon a Clerks' assignment but here we are not called upon to decide that question.

The claim should be denied.

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 employe 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1942.