

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Ernest M. Tipton, Referee

**PARTIES TO DISPUTE:**

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

**READING COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When on February 21st, 1941 Car Checkers W. H. Stitzel and Wm. Schminke were notified not to report for work the following day (Washington's Birthday), Saturday, February 22nd, 1941 and were not called for duty on Sunday, February 23, 1941, such records and clerical duties in conjunction with their regular assigned positions as were required on both of these days having been assigned to and performed by Yardmasters, and

(2) That Car Checkers Wm. H. Stitzel and Wm. Schminke shall now be paid punitive rate for each of these days.

**EMPLOYES' STATEMENT OF FACTS:** Wm. H. Stitzel is the regularly assigned incumbent of Clerical position working 7:00 A. M. to 3:00 P. M. daily except Sunday, and Wm. Schminke is the regularly assigned incumbent of Clerical position working 3:00 P. M. to 11:00 P. M. daily except Sunday, at Montgomery Ave. Yard Office, both of these employees being assigned to 313 day per year assignments as indicated by Carrier's Bulletin No. 30, copy of which is shown as Employees' Exhibit "A."

On Friday, February 21st, 1941 the above mentioned employees were notified not to report for duty on Saturday, February 22nd. The same date the Trainmaster issued verbal instructions to the Yardmasters that records were to be kept by them (the Yardmasters) on movements of cars passing through Montgomery Avenue, February 22nd and 23rd, and such Clerical work was performed by the Yardmasters on both dates.

On February 22nd and February 23rd, the following movements were made through Montgomery Avenue Yards for which records were taken by the Yardmasters covering initial, number of car, contents, consignee, destination, arrival and departure time.

| Engine Number<br>or Symbol | Time      | Number of Cars | Direction |
|----------------------------|-----------|----------------|-----------|
| February 22nd.             |           |                |           |
| GP 2                       | 2:10 A.M. | 11             | Inbound   |
| PT 5                       | 4:20 A.M. | 8              | "         |
| BP 2                       | 6:20 A.M. | 1              | "         |
| 1183                       | 5:30 A.M. | 9              | Outbound  |

stantiation of which the Carrier desires to refer the Board to Award No. 806 of the Third Division, especially to that part of the "Opinion of Board" reading as follows:

"As this Division has previously pointed out, there are few, if any, employes of a carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties."

Carrier also desires to direct the Board's attention to Award Nos. 1418 and 1554 of the Third Division. In Award No. 1418 it was stated in the "Opinion of Board" that the scope rule of the agreement does not enumerate the kind of work to which the agreement applies, but only enumerates the type of employes covered by the agreement and that **not all clerical work is performed by clerical and other employes**. In the "Opinion of Board" in Award No. 1554 it states in part as follows:

"Agent Wright did not come under the Clerks' Agreement. It is said that he did not come under any agreement. However, it is our opinion that a part of his duties as agent consisted in billing freight. The fact that clerk Hannah also billed freight did not give him the exclusive right to do so, and we conclude that there has been no violation of the Clerks' Agreement."

While the circumstances in Award Nos. 1418 and 1554 are not similar to those in the instant case, the Carrier maintains the principles in the "Opinions" are applicable to this case and sustain the Carrier's position.

In view of the foregoing, the Carrier maintains that the work performed by the yardmasters in this case was only for the purpose of having information available in connection with his duties as yardmaster in order to promptly answer any inquiries regarding the movement of certain cars and that such memorandums as the yardmaster made were on loose sheets of paper or on the backs of car tickets and were not permanent records, such as are made in books and preserved for a number of years, therefore, the yardmaster did not perform the regular duties assigned to the claimants, and the claim is without merit and not justified.

However, should the Board consider otherwise, inasmuch as these car checkers were properly notified not to work on the holiday and Sunday was not part of their assignment, the Carrier holds that there is no justification for a full day at time and one-half as claimed by the Clerks' Brotherhood and that the maximum that they could be entitled to would be covered by Rule 8 (a) of the agreement reading:

"Except as provided in paragraph (b) of this rule, employes notified or called to perform work not continuous with, before or after the regular work period or on Sundays and specified holidays shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

which, in view of the fact that the information set down by the Yardmasters on the loose sheets required considerably less than two hours of their eight hour tours, would entitle the claimants to not more than a minimum call as defined by the rule.

Carrier holds there was no violation of the rules of the effective Clerks' Agreement and reiterates the claim is without merit and not justified and should be denied, and Carrier so requests.

**OPINION OF BOARD:** Briefly, the Board finds the controlling facts in this record to be as follows:

The claimants are occupants of the two clerical positions, designated as Car Checkers at the Montgomery Avenue office yard, whose assignments

were for every day except Sundays. In other words, these positions were 313-day assignments. Their duties included the checking of cars in the yard and the maintenance of a permanent record of cars arriving and dispatched at that point.

Except for the two days in question, the clerical work as performed on these two days was not done at this yard on Sunday and holidays. On the above-mentioned dates, the claimants did not work.

Upon special request of their superiors, the Yardmasters did make a memorandum of the cars at this yard. In other words, they did make a record that was ordinarily made by the claimants on their regular assignment, except the work was not transferred on the permanent record, but instead, the slips of papers were placed between the sheets of the permanent record book. The Carrier contends that this record was made through a misunderstanding, and all that was wanted was the movement of certain cars of perishable freight. However, the fact remains that these yardmasters did make the same records on these slips that the claimants made on the days they worked. These records were not for the personal use of the yardmasters, but were in addition to the records kept by the yardmasters in the performance of their work.

This referee has been cited various awards of this Board to support the contention of both parties to this dispute, but he finds that none of them exactly answer the question to be determined in deciding this claim.

The Board will first decide claim as to Sunday, February 23rd. For practical purposes, the claimants' assignment was for six days a week, Sunday being their day of rest.

Stripped of all verbiage, the question is, "May a Yardmaster perform the work of a Clerk, who has a six-day assignment, on his day of rest?"

That exact question was before the United States Railroad Labor Board in Decision 3341 when this question was asked, "Is it permissible to use an employe in some other class of service to relieve a clerk on his assigned day of rest, whether Sunday or some other day?" The decision of that Board was "No."

Since the record shows that had the work in question been done during the six week-days, the claimants would have done this work; therefore, under the above decision, it was work belonging exclusively under the Clerks' Agreement. It came within the scope rule of that agreement, and could not be lawfully performed by the yardmasters.

The Board recognizes that yardmasters have a right to do clerical work incidental to their duties without violating the Clerks' Agreement, but in this case, the work in question at this yard belonged exclusively to the clerks, under the current agreement, and that agreement was violated on Sunday, February 23rd.

The Board, also, holds that since yardmasters could not do the work on Sunday, the claimants' day of rest, the yardmasters had no right to do the work in question on the legal holiday, February 22nd, and this would be true whether the positions held by the claimants were 306 or 313 day assignments per year.

From what we have said, it follows that it would serve no useful purpose to discuss the questions in reference to the 313 day assignments, and rules nine and fifteen of the current 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 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 violated the current agreement as contended by the petitioner.

**AWARD**

Claim (1 and 2) sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: H. A. Johnson**  
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1942.