

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the work of checking sidings at the coal mines located on and within the Hinton, West Virginia Group 1 Seniority District, preparing statements and reports and maintaining records in order to develop and determine what C. & O. cars move over the C. & O. and what C. & O. cars move over the Virginian Railway Company is work covered by and embodied in the Scope Rule of our Agreement, and that it shall be performed by Group 1 Hinton District employes holding seniority rights therein.

EMPLOYEES' STATEMENT OF FACTS: The Hinton Division constitutes a seniority District which runs from MX Cabin milepost 355.3 which starts on the main line of the C. & O. east of Hinton, West Virginia and runs along the main line to milepost 428.2 to a place known as Morris Creek Junction, West Virginia. This District is located in the heart of the coal fields, and from the main line we have numerous branch lines running up into the coal fields and to the coal mines. There is one known as the Laurel Creek subdivision, another the Piney Creek subdivision, another Terry subdivision, another Glade Creek and Raleigh subdivision, Blue-Jay subdivision, Raleigh and Southwestern subdivision, Winding Gulf subdivision, Piney River and Paint Creek subdivision, Stone Coal subdivision, Loup Creek subdivision, Southside subdivision, Rock Lick subdivision, White Oak subdivision, White Oak Railroad, Price Hill subdivision, South Main Line, Keeney's Creek subdivision, Hawks' Nest subdivision, Gauley subdivision, Gauley and Rich Creek subdivision, Open Fork subdivision and Powellton subdivision. All of these branches are part of the Hinton Division under the jurisdiction of the Superintendent and constitute the Hinton seniority District.

Several years ago the Management requested that a weekly report be prepared showing the number of C. & O. cars at each mine on the Hinton Division which were being used by the Virginian Railway Company for loading and shipment over their lines. The Superintendent employed one Mr. George Daniels, a Conductor, who would go to the Yard Office at Raleigh, West Virginia each morning and secure a number of forms CF-62, which is a regular Yard Clerk's switch list form, after which he would proceed to the mines and check the tracks, listing all cars placed there each morning, and again he would check the tracks at 1:00 p.m., and sometimes he would check them more than twice a day. He would then come back to the Yard Office and take the serial record book kept by the clerks and check the switch lists of cars he recorded thereon the previous day against the serial record book of cars moving out over the C. & O. lines that day and the

cars to another mine where needed. Also, in connection with his duties outlined above, he listed car numbers at the mine under his survey and submitted these lists, together with his report of investigation and irregularities, as outlined above, to the General Superintendent at Huntington in whose office the car numbers were checked against a continuous record. The listing of car numbers, however, was a very small portion of his duties.

The position of Car Service Inspector is not, therefore, a clerical position as claimed by the employes, but is clearly a subordinate official position specifically excepted from the application of the Clerks' Agreement by Rule 1 (b), Section 2, reading as follows:

"Except as otherwise provided in this rule and Rule 26, this agreement shall not apply to:

"Subordinate officials, General Foremen and employes regularly assigned to bona fide road service where special training, experience and fitness are necessary."

The duties of this position required the incumbent to have a thorough knowledge of mine operation, as well as a knowledge of mine switching, and the method of handling cars on mine tracks. Clerical employes are not qualified to do this class of work, and it certainly does not fall under the scope of the Clerk's Agreement.

As stated above, Mr. Daniels was promoted from the position of Mine Run Conductor and was familiar with and had a thorough knowledge of mine operation, as well as a knowledge of mine switching.

Further, in support of the Carrier's contention that this is a subordinate official position, attention is called to the fact that when Mr. Daniels was promoted to the position of Car Service Inspector his seniority rights under the Conductors' and Trainmen's Agreement were protected under Rule 50 (c) of that agreement, reading as follows:

"Conductors and trainmen accepting official or subordinate official positions with the railway or doing Committee work for their respective organizations will not be required to get a leave of absence and their seniority rights shall not be affected thereby."

The employes in handling this case referred to your Board's Award No. 1523. In the case covered by that award, a clerical position had been established and check mine tracks within a yard. Later the clerical position was abolished and the work returned to conductors who had performed it prior to the establishment of the clerical position. That situation is entirely different from that existing in the instant case. Here we do not have merely a matter of checking cars in a mine track. As set out herein, the incumbent of the position of Car Service Inspector had to have a thorough knowledge of mine operation and method of handling cars in mine tracks in order that he might observe and report irregularities in handling cars, assist in regulating supply of cars, and see that the mines received proper service. The listing of car numbers in the mine tracks was merely incidental to his other duties. In this connection, however, attention is called to the fact that your Board in Award No. 1523 plainly differentiated checking cars on a yard from checking cars on the road "where clerks ordinarily do not function."

It is the Carrier's position that this Car Service Inspector was not covered by the Clerks' Agreement (See Rule 1 (b), Section 2 quoted herein) and the work he performed did not come under the scope of the Clerks' Agreement. The claim should, therefore, be denied.

OPINION OF BOARD: This is a joint submission. The Chesapeake and Ohio Railway and the Virginian Railway are competitors for coal traffic in the New River Coal District. In the so-called Winding Gulf Fields their lines parallel each other and in the Stone Coal Creek area the line is operated by the Virginian Railway which handles C. & O. cars to the junction

point where they are taken over by the C. & O. The Virginian Railway charges the C. & O. for this service. In order to see that C. & O. equipment was properly handled at loading points at the mines, and in particular to make sure that C. & O. cars were properly set by the crews of the Virginian Railway, and that the C. & O. got its proper share of the traffic, the Carrier here involved appointed George H. Daniels to the position of Car Service Inspector. His duties were largely along the line of the Virginian Railway; and it is not difficult to see that it was a position which required the assumption of considerable responsibility, and a knowledge of the handling of cars on the sidings leading to the loading points. Also it was essential to have in the position a man of discretion and tact in dealing with the crews of a competing railroad. It is much more than a clerical position and the really important part of the work goes far beyond the mere keeping of records and the performance of duties which would ordinarily be regarded as clerical. In this respect the facts of this case are different from those discussed in Award 1523.

The Committee claims that this is work which belongs to the clerical force and that in assigning it to one not covered by the agreement there was a violation of the scope rule. It is true that the holder of the position here involved is called on to do some clerical work. But, as has been repeatedly pointed out, the scope rule of the Clerks' Agreement does not refer to work but to a particular class of workers. In the nature of things it could not be otherwise, for it is recognized that almost every employe and official of a carrier is called on to perform some clerical work. So long as that work is merely incidental to the performance of his regular duties, there is no violation of the agreement. Awards 806, 1418.

The Committee makes considerable point of the fact that the incumbent of this position has had a number of different titles, first he was called a conductor, then a yardmaster, and then a car service inspector, and it is claimed that the Carrier was groping for some title which would appear to give this man a standing and classification which he was not entitled to have. But the title which is given to a position is not important. The only question is, what is the work which the employe is called on to perform?

We are satisfied that this man is not a clerical worker as that phrase is used in the Agreement. His duties are primarily of an entirely different nature and what clerical work he does perform is merely incidental to the carrying on of his regular work.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.