

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

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

**LEHIGH VALLEY RAILROAD COMPANY**

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

1. When it assigned regular Yard Clerk duties to an employe outside the scope of the Clerks' Agreement, Sundays, May 10th and 24th, 1942.
2. That regular assigned Yard Clerk Quinton Morrison should have been given preference in performing the work Sundays, May 10th and 24th, 1942, and shall now be paid at time and one-half rate for the Sundays in question.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. Morrison's position as Yard Clerk at South Plainfield is regularly established with Sunday as the assigned day of rest. The duties are those incident to a Yard Clerk's position, checking cars, various reports, preparing drill slips for the Yard Crew, etc.

On Sundays, May 10th and 24th, 1942, it was necessary to work the drill crew on the 3:00 P. M. to 11:00 P. M. trick and the drill slips and other yard clerk duties were assigned to and performed by an employe not under the agreement. Written claims submitted to Superintendent Swift by Clerk Morrison were denied and conferences were held with Asst. to Vice President and General Manager Mr. Haines, at which this claim was discussed. At conference April 13, 1943 Mr. Haines denied payment claimed.

**POSITION OF EMPLOYEES:** Mr. Morrison, Yard Clerk, is regularly assigned to the duties of Yard Clerk at South Plainfield Yard, and the work performed on Sundays, May 10th and 24th, 1942, was work that rightfully belonged to Mr. Morrison, and he should be paid therefor, under the provisions of Rules 1, 2, 18, 20, 37 and 82 of the agreement effective March 1, 1939, reading:

**Rule 1.** "These rules shall govern the hours of service and working conditions of all the following employees, subject to the exceptions noted:

**GROUP 1**

Clerks (including Yard Clerks)  
etc.  
etc."

The rule above quoted embraces the clerical work here involved and the agreement does not give the Carrier the right to remove such work from the agreement except in the manner provided, it spells out those who are covered and the provisions under which certain positions are excepted, and we contend that the Carrier violated the agreement when it required and instructed

be held promptly and in compliance with the provisions of the amended Railway Labor Act. Pending final settlement of any dispute, these rules shall remain in effect."

This rule and the terminating clause provides the method of changing the agreement and if the Carrier desired to assign the performance of clerical work to employes outside the agreement, it should have handled the matter in accordance with Rule 82.

The Organization contends that the agreement contemplates by its terms and intent, that all clerical work here involved shall be performed by the clerical employes for whose benefit the agreement was made, subject and pursuant to its provisions.

The record shows that there was sufficient work of the nature that Mr. Morrison usually performed on week days to be done on the Sundays in question to warrant his being called.

The Rules Agreement of March 1, 1939 between the parties established the rights of employes covered by the agreement to perform clerical work. This agreement obligates the Carrier to assign such duties, when required on Sundays, to employes who perform such duties the other days in the week, and where Carrier violated the Agreement, Quinton Morrison should properly be paid for time lost Sundays, May 10th and 24th, 1942.

Your Honorable Board's attention is directed to AWARDS 1630, 1631, 1638, 1646, 2044 and 2052 of THE THIRD DIVISION.

We therefore request that your Honorable Board sustain our claim on the facts presented.

**CARRIER'S STATEMENT OF FACTS:** On account of the handling of lend-lease freight at South Plainfield, it was more than the Agent could take care of, and a position as Yard Clerk was established to assist the Agent in the work, and as the position was not required on Sunday, it was advertised as a six-day job, with Sunday as day of rest. On Sunday, May 10 and 24, there was some little work to be done, and the Agent prepared the drill-slip for the yard crew, as he had always done before the Yard Clerk was put on, which involved a few minutes' work.

**POSITION OF CARRIER:** The Agent at South Plainfield is a working agent and ordinarily does all the work of this station, including, of course, the clerical work; but, on account of the increase in work by reason of the Government using South Plainfield as a lend-lease storage point, the Yard Clerk was put on to assist the Agent in the increased work. The work required on Sunday was such that it was not necessary to have any help on Sunday, and the position of Yard Clerk was advertised on a six-day basis, with Sunday as his day of rest. On the two days complained of, it was necessary to do some switching at the station, and the Agent prepared the switching list for the crew, which he had done every day before the additional help was put on, and which, on the days in question, required a few minutes of his time.

With the discontinuance of the handling of lend-lease material at this station, the position of Yard Clerk will be abolished and the work remaining at the station will be taken care of by the Agent as heretofore and as is the practice at all one-man stations. There are no grounds under the Clerks' Agreement or in practice for this claim, and it should be denied.

**OPINION OF BOARD:** Prior to the establishment of a lend-lease storage plant at South Plainfield, all of the work was performed at that point by three agent-telegraphers, one on each of three tricks, all three of whom were under the Telegraphers' Agreement. Because of an increase of work due to the establishment of the lend-lease storage plant, the force was increased by the addition of an Assistant Agent and two yard clerks. The record shows that the agent at Plainfield was a working agent prior to the establishment of

the storage plant, doing all the work of the agency, including whatever clerical work was necessary. The two yard clerks were assigned to a six-day position with Sunday as the day of rest.

On two Sundays, May 10 and 24, 1942, it was necessary to work the drill crew for an eight-hour period. The drill slips and other yard clerk duties were performed on these two Sundays by the Agent-Telegrapher, the work having been a part of his regular duties before the two yard clerks were assigned. The Clerks' Organization contends that the work belonged to the Clerks and that preference should have been given to Yard Clerk Morrison, one of the assigned clerks. The issue concisely stated is: Did the adding of a yard clerk's position with a six-day assignment with Sunday as the day of rest, with duties previously performed by the Agent-Telegrapher, automatically transfer clerical work performed on Sunday from the Agent-Telegrapher to the assigned yard clerks?

The applicable rule is: "No overtime hours will be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable.

"In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and holidays." Rule 18, current agreement.

It seems to us that when sufficient clerical work developed to warrant the Carrier in assigning yard clerks under the Clerks' agreement, that all the rules pertaining to the clerks became operative. In this respect, the evidence shows that the Sunday work herein involved was similar to and grew out of the work which made the assignment of the yard clerk positions necessary. In other words, the making of the drill slips and other work pertaining to the switching operations connected with the lend-lease storage plant is the same type of work that the two assigned yard clerks performed six days each week. It appears therefore that such work has become that to which the yard clerks were entitled to perform. It being the same class of work as well as directly growing out of the clerical work that the yard clerks were assigned to perform, we are obliged to say that an affirmative award is required.

**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 agreement in failing to assign the work in question to the regularly assigned yard clerks.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1944.