

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**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

Wilson McCarthy and Henry Swan. Trustees

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that J. J. Crumb, Helper Yard Office, be paid the difference between amount earned as Car Checker and Bill Clerk, rate \$6.87 and \$6.98 per day, respectively, and what he would have earned as extra gang timekeeper assigned to Extra Gang No. 6462 ten hours daily, including Sundays and holidays, rate \$6.29 per eight hour day plus two hours' overtime at time and one-half, beginning April 12, 1944 and continuing thereafter, account abolishment of his assigned position of extra gang timekeeper under conditions herein-after cited.

EMPLOYEES' STATEMENT OF FACTS: Position of extra gang timekeeper, gang No. 6642, was bulletined under date of February 10, 1944, as follows:

"Bids will be received up to and including February 23, 1944 for the following:

Position of timekeeper, extra gang No. 6462 at Provo, assigned hours 8:00 A.M. to 6:30 P.M., meal period 12 noon to 12:30 P.M. Sundays and designated holidays excluded. Rate of pay \$6.29 per eight hour day; gang working ten hours per day."

J. J. Crumb at that time assigned to position of Clerk at Helper, Utah was awarded this position under date of February 29, 1944 and worked the position until April 1, 1944 at which time he was notified the position would be abolished. He was allotted his vacation period from April 1 to April 11, inclusive and upon his return from vacation he exercised his seniority by displacing a junior employe on position of Car Checker at Helper.

When the position of timekeeper of extra gang No. 6462 was abolished on April 1, 1944 the gang was located at Lakota, Utah. Effective same date designated extra gang known as "Extra Gang No. 6463" was established and a foreman assigned to that gang. Thereafter all employes carried on the payroll of gangs designated as "No. 6462 and 6463" were assigned to the same outfit commissary and kitchen cars and have continued to be thus assigned regularly working daily in approximately the same location.

Two laborers carried on payroll designated as "Extra Gang No. 6462" have regularly been assigned as camp tender and kitchen helper to cover out-

conference in connection with this dispute, the Organization representative stated that the claim was a continuing one from April 12, 1944, irrespective of what job Mr. Crumb had been filling. In addition thereto, the claim is for ten hours' pay, including Sundays and holidays, beginning April 12, 1944, when, as a matter of fact, neither Mr. Crumb nor Extra Gangs 6462 and 6463 were assigned to or performed any work on Sundays and holidays.

As a matter of information, below is shown, by months, the gross amount Mr. Crumb would have earned as timekeeper April 1944 to June 1945—both months inclusive—and the gross amount he was paid in other classes of clerical service:

Month		Amount would have earned as timekeeper	Amount actually paid for service performed	Difference
April	1944	\$ 216.25	\$ 235.76	\$ 19.51
May	1944	224.90	301.97	77.07
June	1944	224.90	346.11	121.21
July	1944	216.25	299.64	83.39
August	1944	233.55	326.77	93.22
September	1944	216.25	331.89	115.64
October	1944	224.90	374.76	149.86
November	1944	216.25	288.63	72.38
December	1944	216.25	202.89	D- 13.36
January	1945	224.90	262.21	37.31
February	1945	198.95	315.58	116.63
March	1945	233.55	305.59	72.04
April	1945	216.25	268.38	52.13
May	1945	224.90	410.10	185.20
June	1945	224.90	270.21	45.31
		<u>\$3312.95</u>	<u>\$4540.49</u>	<u>\$1227.54</u>

It will be observed from the foregoing tabulation that during the period April 1944 to June 1945, inclusive, with the exception of December 1944, Mr. Crumb made more money than if he had continued in service as timekeeper on Extra Gang 6462. Furthermore, had Mr. Crumb not laid off from December 7th to December 12th, 1944, his earnings for that month would have exceeded what he would have earned as a timekeeper on Extra Gang 6462.

CONCLUSION:

The Carrier has proven that there is no rule in the current agreement with the Clerks' Organization which provides for the use of employees coming within the scope of that agreement as timekeepers on extra gangs. It has also proven that the performance of clerical work, incidental to their position, by extra gang foremen or assistant extra gang foremen is not clerical work subject to the provisions of the current Clerks' Agreement. It has further proven that from a monetary standpoint Mr. Crumb was not injured as result of abolishing the job of timekeeper on Extra Gang 6462, but on the contrary, his earnings opportunity was greatly increased.

The Carrier contends Awards 1694, 1695, 1696 of your Division, cover claims squarely in line with the instant claim. Each of the claims covered by the above-mentioned Awards were denied, and the Carrier asserts the instant claim should likewise be disposed of.

OPINION OF BOARD: Claimant was assigned by bulletin dated February 29, 1944, to position of Timekeeper on Extra Gang 6462. On April 1, 1944, Extra Gang 6463 was established and a part of the laborers on Extra Gang 6462 were assigned thereto. With the establishment of Extra Gang 6463, Claimant's position was abolished. Claimant thereafter exercised his seniority and worked as Car Checker and Bill Clerk in the Yard Office at Helper, Utah. He contends that the position of Timekeeper on Extra Gang 6462 was improperly abolished and that he is entitled to be compensated for his monetary loss because of having been wrongfully deprived of the timekeeping work.

The Organization contends that it has been the practice of the Carrier to assign a timekeeper from the Clerks' roster to extra gangs of twenty-five men or more. For the purpose of this discussion only, we will accept this statement as true. The Organization argues that Extra Gang 6462 had a consist of more than twenty-five men until Extra Gang 6463 was established, that the two extra gangs were in fact one and that the establishment of Extra Gang 6463 was done only for the purpose of substituting a Foreman for the Timekeeper's position.

The record shows that Extra Gang 6463 was actually set up on the records of this Carrier as a separate gang, a Foreman was regularly assigned to it who was paid the regular foreman's rate, and that the two gangs worked separately on different jobs although they were housed and boarded in the same group of outfit cars. It is also established that each of these two gangs averaged less than twenty-five employees during the time in question.

We have held that timekeeping is work incidental to the position of Gang Foreman. Whenever in the judgment of management the clerical work of a foreman's position becomes so burdensome that he is unable to perform it, it is work which must be assigned to a Clerk. When the necessity for assistance to the Foreman is past, the Clerk's position may properly be abolished and the work returned to the Foreman to whose position it is incidental. Awards 1694, 2334 and 2685.

We think the question whether one gang or two gangs shall be established under the conditions such as we have here involves solely a prerogative of management. We can understand that in doing some types of work, a large gang with one foreman can better perform it while in other kinds of work, requiring closer supervision, two gangs with a Foreman each can better do the work. The fact that the action taken may require the establishment or discontinuance of a Timekeeper's position is not a controlling factor.

It is evident that the Foreman of these two gangs were able to perform the timekeeping work as incidental to their positions. It being shown that each gang contained less than twenty-five employees, the practice asserted is not material to the issue. Under the circumstances shown, there was no violation of the Agreement or of any established practice which has been pointed out to us.

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 employee 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 Agreement was not violated by the Carrier as charged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.