

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 ERIE RAILROAD COMPANY

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

(1) The Carrier violated and continues to violate the Clerks' Agreement at East Buffalo, New York, when it abolished position of Yard Clerk and assigned the duties thereof to Yardmasters, employees not covered by rules of the Clerks' Agreement; and

(2) That Carrier shall reestablish position of Yard Clerk, QX Yard, East Buffalo, New York, bulletin, award and assign such position to senior qualified applicant retroactive to October 7, 1945; and

(3) That such senior applicant and all other employees affected be reimbursed for any and all wage loss sustained retroactive to October 7, 1945.

EMPLOYES' STATEMENT OF FACTS: Position of Yard Clerk, hours, 4:00 P.M. to 12:00 Midnight was established at QX Yard, East Buffalo, N. Y., covered by clerical advertisement No. 35 of July 22, 1942. In addition to other duties the incumbent of the position was required to chalk cars. Other Yard Clerks are required to chalk cars as a part of their regular duties. Effective, October 27, 1945, the position of Yard Clerk, hours, 4:00 P.M. to 12:00 Midnight was abolished and remaining Yard Clerks were unable to absorb the chalking of trains during the former hours of the assignment, and as a result, Yardmasters and Yard Conductors are issued copies of train lists and they chalk all unchalked cars which are ready for handling.

During the hours of this assignment four (4) or more westbound trains, Hornell, N. Y., to Buffalo, N. Y., arrive with 300 or more cars. Four (4) or more trains arrive from the Niagara Falls Branch, Black Rock, East Ferry Street and Suspension Bridge with approximately 100 or more cars, all of which are handled and yarded, and most of these cars were chalked by the incumbent of the position abolished, in addition to some other duties.

Yardmasters now performing the chalking of cars formerly performed by the Yard Clerk, position abolished, are J. Lagowski, Yardmaster, E. Mussehl, Yardmaster, JX Yard, and W. F. Knoll, Relief Yardmaster, JX and QX Yards, who chalks cars while relieving J. Lagowski and E. Mussehl.

E. J. Zgoda, seniority date 6-25-45, regular assignment Asst. Chief Clerk, third trick, 12 midnight to 8:00 A. M. Saturday, December 22, 1945, was Zgoda's regular day of rest. He worked on his regular assignment on December 22nd and was paid at rate of time and one-half.

Rule 42, page 31, covers procedure in filing claims. The only claim of record filed in behalf of any employe is the claim of Division Chairman in behalf of J. Daniels and five others listed above and these claims definitely cover alleged violation of rules account yardmasters and others chalking cars.

This claim should be denied for the following reasons:

- 1—On second trick prior to October 27, 1945, there were four yard clerk positions. On first and third tricks there were three yard clerk positions. Additional yard clerk position on second trick was assigned to assist Yardmaster account heavy movement of oil and defense materials and return of empty equipment. With decrease in movement of war materials the additional position was no longer required. Effective October 27, 1945 this one yard clerk position was abolished and work on second trick 4 P. M. to 12 midnight was distributed to remaining force as provided in Rule 1(c)-1.
- 2—The work on second trick 4 P. M. to 12 midnight is similar to work performed on first trick 8 A. M. to 4 P. M. and on third trick 12 midnight to 8 A. M., and same number of jobs are assigned to each trick and work is done in similar manner on each trick, including the chalking of cars.
- 3—Previous awards by the National Railroad Adjustment Board sustain position of Carrier in principle involved,—

Third Division Awards 1708-2175 (Erie cases)

First Division Awards 1196—5984—8547—8548.

Fourth Division Award 87.
- 4—Practice of Yardmasters, Yard Conductors and other employes chalking cars antedates any agreement with the Clerks, and practice has continued under agreement effective September 1, 1936 and new agreement December 1, 1943.

OPINION OF BOARD: On and prior to October 27, 1945, ten Yard Clerks were assigned to work at QX Yard, Buffalo, New York. Three Yard Clerks were assigned to the first and third tricks and four to the second trick. Effective October 27, 1945, one Yard Clerk position on the second trick was abolished. The Organization contends that the Carrier violated the Agreement when a portion of the remaining work of the position was performed by Yardmasters and Yard Conductors.

It appears that one of the duties of the abolished position was that of chalking cars. The record is clear that all of the Yard Clerks were used to chalk cars and that Yardmasters and Yard Conductors also performed such work. It is the contention of the Organization that the duties set forth in the bulletin advertising the abolished position assigned the work of chalking cars to that position, that under the current Agreement, Rule 1(c), upon the abolition of the position, all the remaining work must be assigned to Clerks, and in permitting Yardmasters and Yard Conductors to assume the duty of chalking cars which was formerly performed by the occupant of the abolished position constituted a violation of the Clerks' Agreement.

The record discloses that the chalking of cars has been performed in the Yards of this Carrier by Clerks, Yardmasters and Yard Conductors for many years. In Award 1708, an award originating on this property, this Division decided that the work of chalking cars was incidental to that of Yardmasters, Yard Conductors, Yard Brakemen and Yard Clerks and did

not belong exclusively to the Clerks. The Organization contends that the effect of this award was destroyed by the current Agreement, it having been entered into subsequently. With this, we cannot concur.

While it is a general rule that work once performed by Clerks cannot be taken from them except by negotiation, the rule is not without exception.

In Award 2334 we said:

"It is urged that as the work was once performed by clerks that it cannot be taken from them except by negotiation. This Division has not adopted this view. A review of Awards 931 and 1694, among others, leads to the conclusion that if the clerical work of a foreman becomes too great for him to perform it, it may be assigned only to a clerk, and when the amount of clerical work abates so that the foreman can perform it himself, it can be turned back to him without violating the Clerks' Agreement."

In Award 3003, we stated the rule as follows:

"We think the correct rule is that the Clerks' Agreement reserves all work usually and traditionally performed by this class of employees, and all work in addition thereto which has been specifically reserved to them by the Agreement and subsequent negotiations. There are qualifications to this rule in the nature of exceptions as evidenced by the awards of this Division dealing with one-man stations, when the Agent or Agent-Telegrapher may under certain circumstances, perform work customarily performed by Clerks, and awards permitting clerical work to revert to an employee of another craft where a force reduction occurs and such clerical work is incidental to the work of such other employee."

See also Awards 3211 and 3221.

In the present case the Carrier asserts that the abolished position was originally created on account of heavy movements of oil and military supplies and return of empty equipment. When such car movements decreased, the position was not needed and was abolished. It is not disputed that all Yard clerical work of the position that remained, except the chalking of cars, was distributed to the three Yard Clerks on the second trick as required by Rule 1(c) 1, current Agreement. But the chalking of cars was performed, in part at least, by Yardmasters and Yard Conductors, positions to which this work was incidental. The reversion of the work to Yardmasters and Yard Conductors after the abatement of the need for the fourth Yard Clerk on the second trick, does not constitute a violation of the Clerks' Agreement according to the previous holdings of this Division.

The contention that the current Agreement has brought about a change in the rule is without force. In the first place, the rule deals only with work which exclusively belongs to the Clerks, which this does not, and has to do with the work of abolished positions. This rule, 1(c), current Agreement, is not a scope rule and was not intended as such by the parties. Consequently, we cannot say that the plain holdings of this Division contained in Awards 1708, 2334, 3003, 3211 and 3221, were intended mutually by the parties to be set aside by reading into Rule 1 (c) a scope provision such as is here contended for. The provision must be construed in the light of what the parties were attempting to accomplish which we think was a proper disposition of exclusive clerical work upon the abolishment of a clerical position. There was, therefore, no violation 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 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 there was no violation of the Agreement by the Carrier, as charged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of March, 1947.