

**Award No. 3877**

**Docket No. CL-3855**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John W. Yeager, Referee**

**PARTIES TO DISPUTE:**

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

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that Clerk, G. W. Bechtol be paid four hours at punitive rate due to first trick Yard Master performing clerical work on January 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, February 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, March 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31, 1945.

**EMPLOYES' STATEMENT OF FACTS:** The claimant, G. W. Bechtol, is regularly assigned to clerical position B-49-G, Lincoln Yard, Detroit, Michigan, rate of pay \$217.96 per month, tour of duty 7:00 A.M. to 4:00 P.M. (one hour for lunch), with relief day Monday. This position is a "seven day" position, the occupant of which is necessary to the continuous operation of the carrier.

Prior to 1931 three clerical positions were in existence on 1st trick at this yard, identified as Chief Clerk, Crew Dispatcher and Yard Clerk. Effective this same year two of these positions were abolished and all clerical work assigned to the one remaining position on this trick. The present duties assigned to position B-49-G, incumbent G. W. Bechtol, are as follows: Crew dispatching incident to all three tricks, handling crew board, calling crews, advertising and filling vacancies, crews laid in, handling time slips for engine and train crews for all three tricks, checking for errors and explaining penalty claims, time tables, general orders, crew register sheet, maintaining crew book, check and correct for all tricks, handle correspondence, reclaims time claims, etc; make up office payroll; prepare accident reports, R. D. forms; all office filing, records, correspondence, train lists, interchange, card waybills and maintain files; maintain credit list of Detroit consignees and delivery instructions on card for consignees, maintain office switching tariff; must have thorough knowledge of car service rules; prepare daily reports, yard cost statement, cars handled, weekly report of cars lightweighed, monthly reports, cars handled to and from connections, time consumed in puller service with the D. T. S. L. R. R. and compile information for Car Distributer at Toledo; prepare interchange to connections, check interchange from connections; prepare semi-annual stationery requisition, order and handle all office stationery; prepare AD-3253-B passing report inbound and outbound loaded cars to and from connections; prepare CT-924 and CT-314 cards for excessive dimension cars, must have some knowledge of clearances; trace cars for consignees, Freight Agent and Division Agent

1. The work performed by the Yard Master, for which compensation is claimed, was incidental to his supervisory duties as such, and did not accrue exclusively to the craft or class of employees of which the Claimant is a member.

2. Even if your Honorable Board should decide that any of the items of work performed by the Yard Master, as listed in the Statement of Facts, was service accruing exclusively to the craft or class of which the Claimant is a member, and thereby, constituted a violation of the applicable Agreement, the Claimant herein is not entitled to the compensation claimed, since he was on duty and, consequently, was not available to perform the additional work.

**III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, Is Required to Give Effect to the Said Agreement Between the Parties and to Decide the Present Dispute in Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreements and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (1) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

**CONCLUSION:** The Carrier has shown that under the applicable Agreement between the parties to this dispute that the work performed by the Yard Master at Lincoln Yard between the hours of 8:00 A.M. and 4:00 P.M., on the dates in question, was incidental to the performance of his supervisory duties as such, and was not work which accrued exclusively to the clerical forces of which craft the Claimant was a member, and, therefore, no violation of the Agreement occurred; and, furthermore, even if a violation of the Agreement had occurred, the Claimant would not be entitled to the compensation claimed.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced).

**OPINION OF BOARD:** This is a claim by the Organization on behalf of Clerk G. W. Bechtol for four hours work at the punitive rate for the days January 1 to 7, 9 to 31, February 1 to 11, 13 to 28, and March 1 to 31, 1945, all days inclusive, on the ground that the first trick Yard Master performed clerical work covered by the agreement with the Organization on the days mentioned. On hearing, the claim in respect to January 15 and February 26 was withdrawn since the controversy involving those two dates was disposed of by Award 3825.

Prior to 1931 three clerical positions existed on the first trick at Lincoln Yard, Detroit, Michigan, the situs of the events which gave rise to the controversy here. In 1931 two of these positions were abolished and the duties of the two abolished positions were assigned to the remaining position. No fault is found here with regard to what was done in that respect at that time. This one position remained through the dates embraced in the present claim. The position was designated B-49-G and on the days

herein involved Bechtol was the regularly assigned occupant of it. Apparently one design of the position was to take over duties at that point which had previously been handled as incidental clerical duties of the Yard Master but which on account of conditions could no longer be properly so handled. These duties were accordingly assigned to the clerks' positions and remained as clerical duties through the dates involved in this claim, or at least they were never removed by agreement or any other formal action. It is reasonably apparent that other and peculiarly clerical duties were also assigned to this position but that is not of any controlling consequence in this controversy.

It appears that on the days covered by this claim the Carrier allowed or required the Yard Master on the trick nearly paralleling the trick of Bechtol to perform certain of the duties properly to be performed as clerical duties. The Organization contends that the duties thus performed by the Yard Master were under the circumstances exclusively clerical duties. The Carrier on the other hand takes the position that while they were properly clerical duties they were not exclusively so that they were duties usually incident to the position of Yard Master and hence to allow the Yard Master to perform them could not be considered a violation of the agreement.

The Organization asserts that the reason that the Carrier allowed or required the Yard Master to perform the service involved was that the assigned clerk did not have time during his assigned hours within which to perform the service.

The character of service performed on these days by the Yard Master is described in the docket and the carrier asserts that this is service usually incident to the duties of Yard Master. It will be assumed that this is true.

We think that an analysis of these facts concerning which there is but little dispute and an application to them of certain well recognized principles will demonstrate the only correct determination of the question of whether or not this docket presents a violation of the agreement.

As long as there was no clerk at this point to whose position these duties were assigned they, as incidental duties of a Yard Master, could be performed by a Yard Master. However, after the clerical positions (position at the time of the incident of the claim arose) came into being and the Carrier assigned to them these duties which had been performed as incidental duties of a Yard Master, the clerical position and these duties came under the Scope Rule of the Clerks' Agreement, there to remain unless and until properly removed.

If we assume that there was no proper removal the effect of what was done was about as follows: The first trick Yard Master was, instead of performing incidental duties of his own position, required to perform duties covered by the Clerks' Agreement and he was to that extent assigned in relief of and in division of the duties of position B-49-G.

Was there a proper removal? The agreement does not specifically point out how incidental duties of a Yard Master, once removed by placing them under another agreement, may be returned as such but we think that the method may be found by reference to Rule 3-C-2, the pertinent part of which is the following:

"3-C-2. (a) When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed.

(2) In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, Foreman, or other Supervisory Employee, provided that less than 4 hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other Supervisory Employee."

The conclusion drawn from this is that in order that former incidental duties of a Yard Master, once withdrawn and assigned to a clerks' position, may not be withdrawn therefrom and returned as incidental duties of a Yard Master unless and until (1) the clerical position wherein the duties are performed is abolished, (2) and not then unless no position under the agreement exists at the location where the abolished position is to be performed, (3) and not then unless the work remaining is less than 4 hours per day and as applied to this docket incident to the work of a Yard Master.

No other method has been discovered which would, without violating the Scope Rule of the agreement, permit the restoration of incidental clerical duties of a Yard Master once they had been removed and placed within the Scope of the Clerks' Agreement.

The position B-49-G, the one to which these duties were assigned on the days in question was never abolished, hence on the inference drawn from Rule 3-C-2 it must be said that the Carrier violated the agreement on those days when it allowed or required the Yard Master to perform certain of the duties assigned to position B-49-G.

The question then arises as to whether or not the claim may be allowed in favor of Bechtol and in what amount and at what rate.

We accept the previously and often announced position of this Division that the assessment of a penalty for violation of an agreement may not be denied on the ground that claim was made in the name of the wrong employee, and proceed to the suggestion that if this was work in excess of what the occupant of the assigned position within his assigned hours could perform that there was no position covered by the agreement to which it could be assigned and this being true there was no proper place for assessment of a penalty.

A sufficient answer to this is that so long as there was no other position to which the excess work could be assigned it was work of the position to be performed outside of regularly assigned hours to which the occupant of the position was entitled, and for a failure to allow him to perform it he was entitled to be paid the same as if he had been allowed to perform.

The rate is determinable by reference to Rule 4-A-1 of the agreement. Rule 4-A-6 does not appear to apply since it contemplates under (a) thereof a call between and not continuous with a regular work period and (b) thereof contemplates a call continuous with but in advance of the regular work period. Rule 4-A-1 is the Overtime Rule and the pay for overtime is time and one-half.

This docket furnishes no accurate information as to the time on these days that the Yard Master devoted to the performance of duties found herein to have been clerical duties, which of course makes any determination herein as to time so consumed to a degree arbitrary. However, the entire duties of the clerk in his position were named as well as were the duties of that position which were performed by the Yard Master. The duties performed by the Yard Master were substantial but we must assume that he also performed his regularly assigned duties as Yard Master.

Taking all these factors into consideration, we cannot conclude that he performed 4 hours of service on each day but we think it is reasonably apparent that the service consumed as much as 2 hours of his time.

It appears therefore that the claim should be allowed for 2 hours at the rate of time and one-half for each of the days named in the claim except January 15 and February 26, 1945, and denied as to those days.

**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 employe involved in this dispute are respectively carrier and employe 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 has been violated.

#### AWARD

Claim sustained for 2 hours at time and one-half rate for all days named in the claim except January 15 and February 26, 1945, and denied as to those days.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1948