

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**

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement at Meadville, Pennsylvania, when it assigned higher rated work to a lower rated position, and

That Carrier shall now compensate employee H. E. Griffith, Yard Clerk, Meadville, Pennsylvania the difference in rate of pay between his regular rate of \$7.42 per day and the rate paid Trick Yardmaster of \$307.60 per month, retroactive to January 20, 1946 and upon all subsequent dates until such time as position is paid a proper rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 20, 1946, there was a regularly assigned Yardmaster at Meadville, Pennsylvania during the hours of 7:00 A.M. to 3:00 P.M. with a rate of pay of \$307.60 per month with one assigned rest day each week, in this instance, Saturday being the regular rest day.

There was also in existence at the location a position of Yard Clerk, rate of \$7.42 per day, hours 7:00 A.M. to 3:00 P.M. with Saturday as a rest day.

Effective with the start of operation at 7:00 A.M., January 20, 1946, the regular assigned Yardmaster's position was abolished. Effective at the same time and location, the Clerk on duty was required to perform all supervisory work formerly done by the Yardmaster, and in addition, performed other duties for which a rate of \$307.60 per month was established including the issuance of instructions to switch crews as well as road crews with respect to location of train, where engine should be spotted, and other work formerly done by employee rated at \$307.60 per month.

On Saturday when employee Griffith is not on duty the Carrier assigns a Relief Yardmaster who works at this location, and in addition, thereto a Relief Yard Clerk is assigned who relieves H. E. Griffith on his rest day.

During the remaining days of the week, only Yard Clerk Griffith is on duty and performs all necessary work.

POSITION OF EMPLOYEES: There is in effect between the parties an Agreement bearing effective date of July 1, 1945, which contains the following rules:

Rule 32 (Rating Positions) reads as follows:

5. This claim is an attempt to force the Carrier to increase the rate of pay of the Yard Clerk who works under the supervision and direction of a General Yardmaster, alleging that the Yard Clerk performs supervisory work of a Yardmaster.

There is no rule in Clerk's Agreement December 1, 1943, amended July 1, 1945, which requires or provides a formula for rerating existing positions to which new work is added that is not identified as belonging to higher rated positions within scope of that agreement. This is a matter for negotiation. (See Awards 2468, 2215, 2027 and 1074).

6. The work that Yard Clerk Griffith performs under supervision and direction of a General Yardmaster is of a kind and character generally recognized as work that may be required of clerks and is done by Yard Clerks as well as by Yardmasters even at points where Yardmasters are on duty.

7. After January 20, 1946, the responsibility and authority to supervise and direct all operations at Meadville Yard, between hours 7 A. M. and 3 P. M. was with the General Yardmaster.

8. Employee Griffith does not have Yardmaster responsibility or authority and he has not been assigned such duties.

OPINION OF BOARD: As stated, this is a claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement at Meadville, Pennsylvania, by the assignment of higher rated work to a lower rated person and that the Carrier be required to compensate H. E. Griffith, the Clerk involved, for the difference between the rate of pay of his assigned position and the rate of the position in which he was required to work retroactive to January 20, 1946, the date it is claimed that the Agreement was first violated.

On analysis of the docket it is found that the claim is based on a contention that this Clerk, an employee covered by the Clerks' Agreement, was required to perform the work of a Trick Yardmaster, a position not covered by the Clerks' Agreement, a position carrying a higher rate of pay than the assigned rate of pay of this Clerk.

There can be little doubt, if any, that if the record discloses that this Clerk was required to work in a higher rated position within the Scope of the Clerk's Agreement or in any position covered by another Agreement which carried a higher rate of pay than the one to which he was assigned he will be entitled to such higher rate of pay for the time he performed the work of such position. The precedents on this question are so nearly uniform that it is deemed unnecessary to cite the Awards.

It, therefore, becomes necessary to determine factually whether or not, as claimed, Griffith was required to work as a Trick Yardmaster. This factual determination must depend upon what the record discloses as to the work done and the responsibility imposed on him after January 20, 1946, that is it must be ascertained whether, as the Carrier contends, he continued to perform the duties of a Yard Clerk, or if, as the Brotherhood contends, he was called upon to perform the functions and assume the responsibilities of a Trick Yardmaster.

As pointed out in the opinion in Award 2133, the line between Yardmasters and Yard Clerks is not clear and distinct. In a reference to this subject and to named Awards, the opinion states:

"The opinions in those awards clearly show that the duties of yardmasters are varied, that essentially this work is supervisory, and that as an incident to these duties yardmasters of necessity perform some clerical work. Likewise in some instances Clerks under the direction of yardmasters perform certain work which in other cases may be done by yardmasters, themselves. * * * The border line which marks the division between these two branches of work is so shadowy it is incumbent on those who claim a violation of the agreement to show that the yardmasters have in fact become

clerks and that the clerks have been entrusted with such supervisory and responsible duties that they are in fact yardmasters."

It is thought that the pattern of this quotation is a proper one for guidance herein. With it in mind we find that in this yard which is divided into two yards a little less than a mile apart, prior to January 20, 1946, there were Yardmasters with assigned hours as follows:

| | |
|----------------------|---------------------------|
| 1 General Yardmaster | 7:00 a. m. to 3:00 p. m. |
| 1 Yardmaster | 7:00 a. m. to 3:00 p. m. |
| 2 Yardmasters | 3:00 p. m. to 11:00 p. m. |
| 2 Yardmasters | 11:00 p. m. to 7:00 a. m. |

Effective January 20, 1946, the Yardmaster position having assigned hours of 7:00 a. m. to 3:00 p. m. was abolished. These were the assigned hours of the General Yardmaster and also of Yard Clerk Griffith.

It was the duties of this Trick Yardmaster position which the Brotherhood says were assigned to Griffith.

The record does not disclose that after this Yardmaster position was abolished that Griffith was relieved of any of his previously assigned duties as a Yard Clerk. The record does not show clearly, but we think it does show reasonably after this position was abolished that he performed certain work that he had not previously performed as Clerk. Whether this added work was of that kind which might be done properly by a Yardmaster or a Clerk is none too clear. By the statements of a number of witnesses it has been made to appear that during his trick he planned work for at least one switch engine, that he instructed Yard Conductors as to where cars were going when trains were switching in the yard, where to get filling for outbound trains, what cars were to come off inbound trains, what caboose was to go with trains, where the head man was to get his train and that he performed other duties of a well regulated yard.

In this connection important elements of information are absent. It is not made to appear that these duties were not performed by him as duties of a Yard Clerk under the direction and supervision of a Yardmaster or a General Yardmaster before the Yardmaster position was abolished, or that they were not done under the direction and supervision of the General Yardmaster after the position was abolished, or that they were not Yard Clerk duties if done under the direction and supervision of a Yardmaster.

We think that in the light of the failure in these respects, the Brotherhood has failed to show that the "supervisory and responsible" duties of a Yardmaster were entrusted to this Yard Clerk.

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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1948.