

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**

**POTOMAC YARD OF THE RICHMOND, FREDERICKSBURG
AND POTOMAC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the carrier violated and continues to violate the Clerks' Agreement:

(1) When on October 21, 1945 it discontinued three positions classified as number clerks or number checkers at the North Forwarding Yard, sometimes referred to as 4 Mile Run, and turned the work over to Yardmasters and Road Conductors not covered by the Clerks' Agreement, and

(2) When on August 7, 1946 it discontinued three positions classified as number checkers, South Forwarding Yard No. 41, and turned the work over to Yardmasters and Road Conductors not covered by the Clerks' Agreement, and

(3) That the carrier (Potomac Yard of the Richmond, Fredericksburg and Potomac Railroad Company) shall now be required to restore the three positions abolished at the North Forwarding Yard and compensate employees affected for wage loss suffered retroactive to October 21, 1945, and

(4) That the carrier (Potomac Yard of the Richmond, Frederickburg and Potomac Railroad Company) shall now be required to restore three positions abolished at the South Forwarding Yard No. 41, and compensate employees affected for wage loss suffered retroactive to August 7, 1946.

EMPLOYES' STATEMENT OF FACTS: Effective April 21, 1943 the carrier established three positions designated as number clerks, one on each shift, rate \$146.60 per month, exclusive of Sundays and holidays, at its North Forwarding Yard frequently referred to as 4 Mile Run, per notice issued that date, copy of which is attached as Employees' Exhibit "A".

On June 8, 1945 the carrier established three positions designated number checkers, one on each shift, rate \$164.96 per month, at South Forwarding Yard No. 41, per bulletins Nos. 97, 98 and 99, copies of which are attached as Employees' Exhibits "B", "C" and "D".

As indicated by their classification, number clerks or number checkers, the duties of these six positions were to check the car number and initials of all cars in the two forwarding yards and all trains leaving the yards, and

prevail we would be taking a long step toward an ultimate requirement that every conductor should be accompanied by a clerk. If this is to be desired it ought to be accomplished by negotiations, rather than by interpretation."

The Carrier is further influenced by a decision rendered by The Appeal Board of the Pennsylvania Railroad on May 28, 1945, in Case No. 220, involving claim of the conductor of a through freight train for one yard day's pay account of being required to record the initials and numbers of the cars at Potomac Yard which were to become a part of his train. In this case it was ruled that since the claimant conductor was required to make a record of the initials and numbers of cars which were a part of his train, he was not entitled to any additional compensation therefor. This decision was later agreed to by the General Chairmen of the Pennsylvania Lines East and Pennsylvania Lines West. The Carrier offers in evidence as Exhibit "G" mimeographed copies of documents bearing on this case.

In conclusion, the Carrier respectfully submits it has shown that:

1. The Conductors of road trains were never relieved of the responsibility of checking their own trains.
2. During the time Number Checkers were employed the Assistant Yardmasters received checks of tracks and other information from these clerks which had not been furnished before, and which was for use by the Assistant Yardmasters in keeping their waybills straight and putting them in a position to direct the various movements in the Yard. At the time the Number Checkers were taken off the conditions which brought about the creation of these jobs no longer existed. There was no work they had been doing that was turned over to the Assistant Yardmasters; it was simply a case where the need for the information regularly furnished by the Number Checkers had passed and the Assistant Yardmasters were able to keep their bills straight from information received from the hump yard offices and from other clerks.
3. That Award No. 2674 of your Honorable Board sustains the position of the Carrier so far as road conductors are concerned.
4. That a decision of The Appeal Board of the Pennsylvania Railroad further sustains the position of the Carrier in that respect.
5. That the Carrier did not in any way violate the Clerks' Agreement when the positions in dispute were abolished.

For all of the reasons given, the claim should be denied, and the Carrier respectfully requests that the Board so decide.

(Exhibits not reproduced.)

OPINION OF BOARD: Here are two claims for alleged violations of the Agreement between the Organization and the Carrier. They are alike except as to dates and locations, and the same character of relief is sought in both instances.

On the south bank of the Potomac River between Alexandria, Virginia, and the south end of Long Bridge crossing into Washington, D. C., the Carrier has a terminal known as Potomac Yard. In the terminal are two forwarding yards. One is known as North Forwarding Yard, or 4 Mile Run, and the other the South Forwarding Yard.

Effective April 21, 1943, the Carrier regularly established in the North Yard three clerical positions designated as number clerk positions. One was placed on each shift which gave around the clock clerical service at this location. On October 21, 1945, the Carrier abolished these three positions and it is claimed that since that time the work which was formerly performed in the positions by the clerks is required to be performed by Yardmasters and Road Conductors in violation of the controlling Agreement.

The Organization seeks to have the clerical positions restored and to have the employees affected compensated for wage loss retroactive to the date that the positions were abolished.

The situation with regard to the South Yard is identical except that the three clerical positions came into being there June 8, 1945, and were abolished August 7, 1946.

The Organization asserts that the abolition of these positions was in violation of the rules of the Agreement. Four rules are specifically referred to. They are Rules 1, 3, 4 and 5.

Rule 1 is the Scope rule and the applicable portion is the following:

"These rules shall govern the hours of service and working conditions of the following classes of employees:

GROUP 1. All employees assigned to or performing recognized clerical duties for three or more hours per day, including operators of office or station equipment devices requiring special skill or training, ticket sellers and information clerks in ticket offices; baggage and parcel room clerks including platform foremen and supervisors, and crew clerks or dispatchers.

Note—Where in any office clerical assistance is required for a stretch of more than three hours within assigned hours on any day the officer in charge will not distribute this work among two or more employees not having clerical status in order to keep the time devoted to such work by one employee below the limit of three hours per day."

Rule 3 is the following:

"Except in emergencies, only recognized clerical employees shall be used in a clerical capacity. If clerical employees are not available, messenger boys will be used, if capable."

This rule defines right of clerical employees to clerical work ordinarily and in emergencies. No emergency is involved here.

The note to Rule 1 obviously must be interpreted as a prohibition against abolishing or blanking a clerical position within Group 1 where there is work in excess of three hours, by distributing the work to employees not having clerical status.

It is to be noted that if a position has assigned to it or in it is performed recognized clerical duties for three or more hours such fact brings the position within the scope of the Agreement.

With the other two cited rules we have no immediate concern. They have application in the determination of rights of employees with regard to compensation if it be found that there was a violation of Rules 1 and 3.

It is significant that the Scope rule as it applies to Group 1 does not include within its scope employees who perform recognized clerical duties for periods of less than three hours per day.

It is further significant that these rules place no restriction upon the right of the Carrier to abolish any clerical position with the following exceptions: three days' notice must be given the employees affected (Rule 17); that established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of the rules (Rule 19-(b)); and that clerical work required to be performed within the assigned hours of a position may not be assigned to employees not having clerical status the effect of which would be to reduce the work of a clerical position below three hours (Rule 1, Group 1, Note).

In order to find that there was a violation of the Agreement the record must disclose that one or more of the exceptions noted was violated. In

other words, the Carrier had the right to abolish the positions herein involved unless in doing so the exceptions noted were violated. We do not find a contention that the first two were violated; however, there is a substantial contention that there were violations of the third exception. The contention is, as is pointed out by the claim, that duties of these clerical positions were required to be performed by Yardmasters and Road Conductors.

The record indicates rather clearly that while these positions were in existence, the duties performed in them consumed more than three hours of time and that the work was in aid of Yardmasters and Road Conductors.

We do not think, however, that this is the criterion or at least the only criterion by which the character and quality of the positions is to be ascertained. We think the purposes which were to be served, the conditions under which the positions came into being, the intendments of the Carrier at the time in creating them as shown, and the treatment of the positions in their relation to other related positions during the time they remained in existence must be considered in determining their character and quality.

It appears evident that if the design and intent was to take away from Yardmasters and Road Conductors their incidental clerical duties or certain of them and to assign them to these new clerical positions and that this was accomplished that there could be no return so long as in any such position three hours of work remained. On the other hand, if the intent and purpose was not to remove from the Yardmasters and Road Conductors any of their essential incidental clerical duties and responsibilities, but was only to give them aid in their performance by making available to them a check of the track location of their cars in the yard, a service not hitherto performed in the yard, then it ought to be true that this aid and assistance could be withdrawn and the positions abolished when they were no longer needed without penalty for so doing.

The record discloses that before the positions were established the Organization sought the establishment of clerical positions in these yards on the theory that work was being performed by others which ought to be performed by clerks. It is not disclosed that the positions were established pursuant to those efforts of the Organization. To the contrary, it preponderantly appears that they were established by the Carrier to take care of a congested condition caused by volume of traffic and a rearrangement and enlargement of yard capacity and facilities. From this it would appear that the intendment of the Carrier was to meet this condition so long as it obtained.

While the positions were in existence they were not treated as having been created for the purpose of reposing in them regular or incidental duties of Yardmasters and Road Conductors. The occupants of the positions were required to check the numbers of cars in the yards and, of course, the results were for the use of and made available to the Yardmasters and Road Conductors but Road Conductors were never relieved by the Carrier from the making of and responsibility for the check of cars going out in their trains. There is evidence that on occasion Road Conductors did use the checks of these number clerks but there is nothing to indicate that this was with either the express or implied consent of the Carrier.

It inferentially, if not directly, appears that as soon as the conditions which caused the establishment of these positions disappeared, the positions were abolished and the work of the yards was permitted to continue as before.

All of this leads to the conclusion that there never was an intention to do anything more, and that nothing more was done, than to establish new and relatively independent positions the purpose of which was to take care of a temporary condition, which left the Carrier free to abolish the positions as soon as the purpose of the positions was served, if it could do so without transfer of work from the positions to others not entitled to it. The record fails to disclose that there was an improper transfer of the work of these positions.

In Award 2674 a situation in some respects similar to this one was considered by this division. There the Organization was seeking to have positions established to perform the type of work involved here and to take over the car checking functions of Road Conductors. The claim was denied. The portion of the opinion having pertinence here is that which makes clear that clerks have no right to claim for themselves the incidental clerical duties of Road Conductors.

In final analysis here is a claim on behalf of clerks for incidental clerical duties of Yardmasters and Road Conductors which were never at any time assigned to clerks. The right to have such incidental clerical duties so assigned does not exist under the Agreement between these parties.

It is the holding, therefore, that the Agreement was not violated when the positions herein involved were abolished.

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.