

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY 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 the Clerks' Agreement; and continues to violate same:

1. When it removed and continues to remove the checking of cars in Superior Yards out from under the Scope and operations of the Agreement, assigning said work to employees not covered by the Agreement who hold no seniority rights thereunder entitling them to perform said work.

2. That the Senior Clerk on the Clerks' Extra List at Superior, Wisconsin, Jos. Dzelak, an employee adversely affected by reason of this violation of the Agreement be compensated for eight hours at the Car Checker's rate of \$8.12 for Dec. 1, 1946, and every day thereafter until April 7, 1947, which was the rate of pay which would have been required had this work been performed by a Car Clerk and not removed from the Scope of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: On Dec. 1, 1946, the work of checking cars was being performed by Switchmen in the Yards at Allouez, Wis. Allouez Yards, as they are called, operate on a full time basis approximately seven or eight months during the year during which time there are numerous Clerks employed in the Yards such as Car Checkers, Manifest Clerks, Weighmasters, etc. During the winter season, on account of Lake Superior being frozen, the movement of Ore is stopped. Since this is the principal commodity handled at Allouez Yards, a slack period is caused and most of the Clerks' positions are abolished. There is, however, just one position which remains during the winter and that is Station Clerk at the rate of \$8.47. All Car Checkers' positions are abolished. Most of the business going thru the Allouez Yards during this so-called closed season consists of coal, ties, ice and various materials for the Creosote Plant. Inasmuch as there are no Train or Car Checkers employed, the Carrier uses Switchmen, employees not covered by the Clerks' Agreement to perform what Yard Checking is necessary in addition to their other duties. These Switchmen, also, perform a minor amount of yard checking during the busy season when Car and Train Checkers are employed in the Allouez Yards.

POSITION OF EMPLOYEES: When it came to our attention on Dec. 1, 1946, that Switchmen were performing Yard Checking in Allouez Yards at Superior, Wis., Jos. Dzelak, an employee on the Station and Yard Seniority Roster Extra List made claim for the work. He wrote a letter as follows:

origin and destination of the cars comprising such trains. When a card is completed it is handed to a clerk in the agent's office, who compares it with Form 445 and then returns it to the conductor."

We attach hereto, designated as Carrier's Exhibit C-1, a copy of our Form 373 which we believe to be similar to the Form 48 mentioned in the quotation above, and which covers a one day record as made by these yard foremen.

In your Award 3211 you state:

"It is well settled as a general proposition that a carrier may not remove work from the scope of one agreement which belongs to the employees under that agreement. Award 3003. A recognized exception to that rule is that clerical work may be performed by employees without the scope of the Clerks' Agreement where it is incidental to the work of their positions."

In your Award 1849 and in numerous others you have consistently supported this position.

In the case now at issue it must be clear from the Statement of Facts pertaining to the case that this work of reporting and checking of the cars handled on Northwestern-Hanna Dock No. 1 is purely incidental to the work of the yard foremen since the clerical work involved does not exceed 30 minutes per day on the two shifts nor does the entire time involved in the check at any time exceed two hours on the two shifts or an average of one hour and fifteen minutes for the checking and entering on the slip on each shift, and that it has so been recognized as believe amply evidenced by the fact that it has been in practice without protest for a period in excess of 30 years.

If there was sufficient work of this nature to justify the use of yard clerks or car checkers at the dock sixteen hours per day such yard clerks or checkers would, of course, be under the jurisdiction and supervision of a yardmaster and in your Award 1849 you stated:

"It appears that the duties described, if performed by a Clerk, would be performed under the supervision of the Yardmaster. It is therefore difficult to understand how such a small amount of clerical work performed by the Yardmaster in a department coming under his supervision can be considered other than as incidental to his position. The time according to the showing does not exceed one and one-half hours per day."

In the instant case, as shown, the time does not exceed one and one-quarter hours per day and is performed by the yard foreman or conductor under the supervision of the yardmaster as purely incidental to his regular duties.

The Carrier therefore holds that since the scope rule of the Clerks' Agreement does not cover work but only specific classes of positions and that since it has been the consistent policy of your Board to hold that the incidental performance of clerical work by employees not covered by the scope of the Clerks' Agreement is not only proper but in many cases necessary, that you cannot do other in this instance than deny the claim of the employees based upon the facts relating to the circumstances in this case.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The claim in this case grows out of the alleged removal, by the Carrier, from the scope of the Clerks' Agreement, of certain clerical work—car checking—performed at Allouez Yard, Superior, Wisconsin, and permitting the same to be done by the foreman of the Switching crew at that point. The case is being heard in connection with Award No. 3988 made this day, where the claimant in this case, along with others, made claim for clerk's work for checking an industry track in the same

yard, and for a part of the same time. Here claim is made from December 1, 1946, and in the case covered by Award No. 3988 the claim was from January 1, 1947. In that Award we sustained the claims, and it has been assumed that the holding in that award would control our finding on this docket. We think the same general principle governs both cases, but we are of the opinion that there is a marked distinction in the factual situations presented therein. The principal question presented is the application of the well established rule that clerical work, in its technical sense, performed by an employe, not covered by the Clerks' Agreement, as incidental to his regular assignment, is not necessarily within the said Agreement. This requires, therefore, an appraisal of the facts in each case where this question arises.

The rule stated above is supported by many awards of this Division, among which are Awards Nos. 615, 806, 1418, 1694, 1849, 2551, 2674, 3211. The principle is not in dispute, the difficulty arising from its application to varying situations which, from time to time develop on the Carrier's lines. We are confronted with that difficulty here.

Generally speaking, the checking of cars is clerk's work, and comes under the Clerks' Agreement, and the exception is where, in particular situations, employes not covered by the said Agreement, do clerical work, in this case checking cars. At Allouez Yard, during the open lake season, when traffic is heavy, a large force, including car checkers, is maintained and the right of clerks to do checking work is recognized. But at the end of the open season a different situation develops. The force in the yard office is reduced to one general yardmaster and one yardmaster; the position of car checker is abolished; and the station force is reduced to the agent and one station clerk. Then reductions are made possible because practically the only business done during the winter months is the shipment of coal accumulated during the summer months. There was and could be no lake traffic.

During the winter months two switch engines were operated in the yard, each for an eight hour shift from 7 A. M. to 11 P. M. Cars were handled from different lines. Following a practice which had existed for many years, the switch foreman was required to keep a record of the cars handled, and their location in the yard, so that when the dock foreman made a request for cars, for loading purpose, they were furnished. When cars were loaded the switch foreman was required to keep a record thereof as the cars moved out of the yard, which he turned over to the Station Agent, who in turn furnished to all railroads concerned information as to such shipments. All of this work which the switch foreman did, involving the keeping of records of the incoming and placement of cars, their loading and moving out of the yard, was clerical work, and necessarily involved the checking of cars. It was work required to be performed during the entire sixteen hours the switch engines were in service. It was not the character of work which could be assigned to any one at any particular time, but was work arising from time to time as cars came in, were placed for loading, or were moved out of the yard after loading. A daily check would not have been sufficient, and if a clerk had been assigned to do this work, or any part of it, he would have been required to follow the switch foreman on duty during the sixteen hours the switch engines were used, whereas, the checking work for the two eight hour shifts is estimated at two hours. Admittedly, the number of hours required to do a particular task is not usually determinative of the right to perform that task, but it need not be entirely disregarded. To so interpret the agreement as to impose on the Carrier the burden of compensating employes for two full days, for work requiring two hours' service, would seem to be too severe, where it can, in reason, be held that the work, though clerical in its nature, can reasonably be said to fall within the rule that employes in any line of work, may do clerical work incidental to their regular assignment. Of course, this rule should not be abused in its application, and Award No. 3988 illustrates our view on that point.

The rule laid down in Award No. 615 of this Division, and following in the supporting awards we have cited, must either be held to have some

practical meaning, and given a reasonable construction, or abandoned. That its application is difficult, is admitted. In the very nature of things, its application must depend on the circumstances and facts of each case presented. We cannot lay down a hard and fast rule. In following the lines of what we conceive to be an equitable and common sense application of the rule, we do not run counter to the principle that this Board does not decide cases on equitable rules, but on agreements as written. Here the agreement, and the awards interpreting it, leave open the question of how far employees, not covered by the agreement, may do clerical work as incidental to their assigned duties, and how are we to resolve that question except on the basis of a reasonable, fair and common sense solution thereof.

There is not, we think, any conflict between our award in this case, and Award No. 3988 this day made. In the latter award we dealt with a case where, though it might be questioned whether clerks had ever done the work on which the claim was based, the Carrier had set up the job of a daily inspection and checking of a particular track leading into a particular plant located thereon, which was clerk's work, and instead of giving it to a clerk, assigned it to a station agent to be performed after hours, and on an overtime basis. The agent was not covered by the Clerks' Agreement, and the work he did was not, in the circumstances, incidental to his regular assignment and we sustained the claim on that basis. Here the work the switch foreman did was work which, to perform his assigned task with efficiency, he had to do, and, in doing it, he had to do checking work and keep a record of what he did, which was clerical work, but plainly necessary and incidental to his regular assignment.

By this award we are not stating a rule of general application, but one based on the facts here presented. When a situation arises, either by the opening of the lake shipping season or otherwise, when the work of checking cars increases to the extent that it cannot be reasonably said that it is work incidental to some other line of work, then the right of the clerks to do the work should not be questioned. If it be said that this leaves the question in an unsettled state, we will agree, because the application of the rule we have discussed must always depend on an existing factual situation. That being true there can be no definite rule laid down applicable to all cases, for it is rare, indeed, when the facts in two or more cases are the same.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of July 1948.