

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, 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 East Buffalo, N. Y., when effective Sunday, July 25, 1948, and on all subsequent Sundays and Holidays it blanked positions of Chief Clerk hours 8 A. M. to 4 P. M., B. S. W. Yard Clerk, hours 3 P. M. to 11 P. M., B. S. W. Yard Clerk hours 11 P. M. to 7 A. M. and Crew Caller, hours 9 P. M. to 6 A. M., positions necessary to the continuous operation of the Carrier and assigned the duties to other employees regularly assigned to positions necessary to continuous operation, and Yardmasters; the Yardmasters being not covered by the Clerks' Agreement and

That the Carrier shall compensate employees P. Courman, E. H. Zwilling, J. W. McLaughlin, H. H. Beasock at time and one-half rate for all Sundays and Holidays their positions have been blanked retroactive to July 25, 1948, for eight (8) hours each day.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to July 25, 1948, the position of Chief Clerk, two (2) positions of B. S. W. Yard Clerk and position of Crew Caller here involved have been considered as necessary to the continuous operation of the Carrier, and worked seven (7) days each week. On July 25, 1948, the Carrier notified Messrs. P. Courman, E. H. Zwilling, J. W. McLaughlin and H. H. Beasock that effective Sunday, July 25, 1948, and all subsequent Sundays and Holidays their positions would not be worked seven days per week, but were changed to six (6) day positions. All of the positions here involved were advertised as seven (7) day positions necessary to the continuous operation of the Carrier. As a result of the notice changing the status of these positions, work of the Chief Clerk's position on Sundays and Holidays has been assigned to the Assistant Chief Clerk hours 8 A. M. to 4 P. M., a seven (7) day position, and to the Yardmaster on duty. The Sunday and Holiday work of position of B. S. W. Yard Clerk hours 3 P. M. to 11 P. M. have been assigned to and performed by the Assistant Chief Clerk and Eastbound Clerk, both occupying positions necessary to continuous operation, who are required to suspend work on their positions in order to perform work on the position blanked. The work on position of Assistant Chief Clerk and Eastbound Clerk that is suspended on Sundays and Holidays is performed by the Yardmaster on duty, and consists of chalking cars received from connections, writing up consists, handling waybills, answering phones and checking cars moving over eastbound hump which are used in making up eastbound trains

"Rule 28—Guarantee: Nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employees below six (6) per week, except as follows:

- (a) Week in which holiday occurs by the number of such days.
- (b) As provided in Rule 23(a)-2.
- (c) By conditions beyond the control of the carrier (See Note).

Note: If worked any portion of the day and less than four (4) hours, four (4) hours shall be allowed. Over four (4) hours, a minimum of one (1) day will be allowed. If permitted to report and prevented from performing service, actual time held with a minimum of two (2) hours will be allowed. Payments under this rule to be at pro rata rate."

These claims are without merit and should be denied for the following reasons:

1. There has been no agreement violation.
2. Rule 17 gives the Carrier the right to change the number of working days of an assignment.
3. All clerical work required and performed on Sundays and holidays at Buffalo, N.Y. is performed by clerks coming within the scope of the agreement who are assigned to work on Sundays and holidays.
4. This request by the Employees, if sustained, would have the effect of abandoning Rule 17 and would hold that once a seven-day position is established it could not be altered in any manner regardless of changing conditions or the fact that necessity for such position no longer exists.

(Exhibits not reproduced).

OPINION OF BOARD: While this claim was originally asserted on broader grounds, the Employees' subsequent submissions have narrowed the issue to whether the Carrier violated the Agreement when it changed four clerical positions from seven to six days per week and assigned a part of the duties thereof to yardmasters, not under the Agreement. In this connection the Organization has said:

"We have no quarrel with the Carrier where an assignment is reduced from 7 to 6 days and the clerical work remaining is performed by clerks. The employees do protest . . . the assigning of clerical work to employees not covered by the Agreement.

The sum and substance of the dispute is the performance of clerical work by employees not covered by the Clerk's Agreement."

On July 17, 1943, the Carrier notified the occupants of the four clerical positions at East Buffalo, New York, identified in the statement of the claim, that effective July 25, said "positions will be changed to work daily except Sundays and Holidays". Thereafter, a preponderance of the evidence shows, yardmasters chalked trains, handled waybills, figured train tonnage, and took consists over the phone on Sundays and Holidays, which work was previously performed by clerical workers.

It is not necessary for us to review the numerous awards of this Division bearing upon what functions may, under particular circumstances, be performed by yardmasters without encroaching upon the rights of employees covered by the Clerks' Organization, because it clearly appears that the functions here involved were being regularly performed by the Claimants before their positions were changed from 7 to 6 days. This establishes that as to the functions enumerated above the parties had previously recognized and treated these as clerical duties. The Carrier is precluded at this late

hour from contending otherwise, therefore, except possibly as to the single activity of chalking cars. As to this function it may well be contended that it was yardmasters' work, in view of what has been decided in Awards Nos. 1708 and 3494. Since it appears that a substantial portion of the Sunday and Holiday work of the complaining clerical workers was improperly taken over by yardmasters when the assignments were changed to six day positions, we must hold that the Agreement has been violated.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of June, 1950.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 2 TO AWARD NO. 4866

DOCKET NO. CL-4770

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Erie Railroad Company.

Upon application of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Employees have asked for a further interpretation of Award 4866 and Interpretation No. 1 thereof by submitting to the Board three interrogatories as follows:

1. Did the Adjustment Board put a cut-off date for the violation of the Agreement in Interpretation No. 1, in view of the continuing violation of the Agreement and the fact that the Carrier has made no effort to discontinue the violation?
2. Does Interpretation No. 1 bar the payment of wage loss to employees by reason of the violation of Agreement Rules here involved, which has continued subsequent to June 13, 1950?
3. Shall the Carrier now be directed and ordered by the Board to compensate such employees until such time as the Carrier discontinues the violation of the Clerks' Agreement?

The original claim, which Award 4866 sustained on June 13, 1950, asked that the Carrier be required to "compensate P. Cournan, E. H. Zwilling, J. W. McLaughlin and H. H. Beasock at time and one-half for all Sundays and holidays their positions have been blanked retroactive to July 25, 1948 for eight hours each day".

Subsequently, on December 15, 1950, the Carrier submitted two questions to this Board and asked that these be answered by way of an interpretation of said Award 4866:

1. Was it the intent of the Board to rule that in Buffalo yardmaster could no longer continue to perform work incident to and directly attached to the primary duties of their positions?
2. Was it the intent of the Board by this Award to sustain only such claims for dates actually produced in the record as a proven incident of a yardmaster assigned to perform the work of one of the claimants whose positions had been reduced from seven days per week to six days per week?

Interpretation No. 1 to Award 4866, dated March 30, 1951, clearly stated that said Award "adjudicated the controversy from July 25, 1948, when it arose, to June 13, 1950, the date of the Award, and automatically entitled each of the named claimants to compensation at time and one-half rate for eight hours for each Sunday and holiday between said dates upon which a substantial portion of the Sunday and holiday work which he had previously performed was taken over and performed by yardmasters." To further clarify the application of Award 4866, we stated in said Interpretation No. 1: "If the parties will ascertain on what Sundays and holidays, if any, between July 25, 1948 and June 13, 1950, the Carrier's yardmasters at East Buffalo performed a substantial portion of the duties, other than chalking cars, that had previously been performed by the claimants, or either of them, identified in the claim, on Sundays and holidays, they will encounter no difficulty in applying the Award".

We are now asked to say whether Award No. 4866 and Interpretation No. 1 thereof are applicable to alleged subsequent violations of the Agreement on undisclosed dates, with respect to the rights of unidentified employees. The Carrier denies that any such violations of the Agreement have occurred. The disputed facts have not been reconciled by the parties and this Board presently has no way of determining those issues.

It ought not be necessary to point out once more that Award 4866 adjudicated specific claims, asserted on behalf of named employes for violations of the Agreement on definitely ascertainable dates between July 25, 1948, and June 13, 1950. That Award can have no application whatever to alleged violations of the Agreement occurring subsequent to June 13, 1950, and involving other employes than those for whose benefit the original claim was prosecuted, beyond whatever value may be attached to said Award as a guiding precedent.

In effect, therefore, the employees' request for a further interpretation amounts merely to a request for abstract answers to hypothetical questions. It is not the proper function of this Board to give advisory opinions under such circumstances. The request for a further interpretation of Award 4866 is, therefore, respectfully denied without prejudice to the rights of either party concerning the matters that may now be in dispute between them.

Referee Curtis G. Shake who sat with the Division, as a member, when Award No. 4866 and Interpretation No. 1 were adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of September, 1951.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 4866

Docket No. CL-4770

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Erie Railroad Company.

Upon application of the Carrier involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

On December 15, 1950, the Carrier requested an interpretation of Award No. 4866 (Docket CL-4770), asserting that a dispute had arisen as to the meaning, intent and application of said Award. The Board was requested to submit answers to two specific questions, to-wit:

"1. Was it the intent of the Board to rule that in Buffalo Yard, yardmasters could no longer continue to perform work incident to and directly attached to the primary duties of their positions?"

"2. Was it the intent of the Board by this Award to sustain only such claims for dates actually produced in the record as a proven incident of a yardmaster assigned to perform the work of one of the claimants whose position had been reduced from seven days per week to six days per week?"

The questions submitted are of such a general nature that neither of them may be categorically answered "Yes" or "No".

We think the claim considered by this Board in its Award 4866 presented a clear-cut issue and that said Award definitely settled that issue. The claim charged that on Sunday, July 25, 1948, and on all subsequent Sundays and Holidays, the Carrier blanked four clerical positions and assigned the duties thereof to yardmasters, not covered by the Clerks' Agreement. The demand was that the four named clerical employees so affected be compensated at time and one-half for eight hours for each Sunday and Holiday that their positions were blanked, retroactive to July 25, 1948.

By our Award we found that the functions with respect to which we were concerned "were being regularly performed by the Claimants (on Sundays and Holidays) before their positions were (on July 25, 1948) changed from seven day to six day positions", and that "the parties had previously recognized and treated these (functions) as clerical duties". On the facts so found we concluded that, "Since it appears that a substantial portion of the Sunday and Holiday work of the complaining clerical workers was improperly taken over by yardmasters when the assignments were changed to six day positions, we must hold that the Agreement has been violated." Accordingly, the claim was unconditionally sustained. This ad-

judicated the controversy from July 25, 1948, when it arose, to June 13, 1950, the date of the Award, and automatically entitled each of the named claimants to compensation at time and one-half rate for eight hours for each Sunday and Holiday between said dates upon which a substantial portion of the Sunday and Holiday work which he had previously performed, was taken over and performed by yardmasters.

The Board was not concerned with the right of yardmasters to perform functions of a clerical nature which are incidental to their duties as yardmasters, or with the right of a Carrier to abolish unnecessary positions.

If the parties will ascertain on what Sundays and Holidays, if any, between July 25, 1948 and June 13, 1950 the Carrier's yardmasters at East Buffalo performed a substantial portion of the duties, other than chalking cars, that had previously been performed by the Claimants, or either of them, identified in the claim, on Sundays and Holidays, they will encounter no difficulty in applying the Award.

Referee Curtis G. Shake who sat with the Division, as a member, when Award No. 4866 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1951.