

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: 1. The Pittsburgh & West Virginia System Board of Adjustment No. 245 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees claim that the Management's action in abolishing position of Yard Material Clerk, Rook Car Shop, Pittsburgh, Pennsylvania, and the assignment of routine clerical duties formerly attached to that position to employees without the scope and operation of the Clerk's Agreement violated the rules of said agreement, and

2. Claim that the position shall now be re-established, the senior qualified employee be placed on this position and all employees affected fully compensated for all wage losses sustained as a result of such agreement violation retroactive to February 15, 1949.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 15, 1949, there existed and had existed for a long period of time an established clerical position titled Yard Material Clerk, monthly rate of pay \$317.82, at Rook Car Shops, Pittsburgh, Pennsylvania. On the date mentioned the position was abolished and the duties thereof assigned to employees holding no rights under the Clerk's Agreement.

On February 15, 1949, the Superintendent Shops placed on the Bulletin Boards, Seniority District No. 7, a notice reading as follows:

"The position of Yard Material Clerk, made vacant today by the retirement of Mr. J. F. Trust, is hereby abolished." (Employees' Exhibit 1).

This case was discussed with the Superintendent of Shops and Purchasing Agent, Mr. Cressler on February 15, 1949, whereat Mr. Cressler advised me verbally it was the Management's intention to discontinue the duties and/or work assignment formerly attached to the position of Yard Material Clerk. My advise from employees, however, was to the contrary and I so advised Mr. Cressler in my letter of February 17, 1949, and also requested of him a statement of the duties that were assigned to the Yard Material Clerk's position prior to its abolishment. (Employees' Exhibit 2).

On March 2, 1949, Mr. Cressler answered my letter of February 17th stating that to his knowledge none of the carrier's employees had been performing any work theretofore—prior to February 15, 1949—performed by the Yard Material Clerk. (Employees' Exhibit 3).

to any "employees without the scope and operation of the Clerks' agreement" and, consequently, these rules were not violated.

A claim should show some evidence for support or it should be denied, and the employees have been unable to show any violation of the Agreement, because it has not been violated.

The Yard Material Clerk was used to assist the Car Foremen and the Yard Material Foreman in work which was their responsibility and when it was decided that this assistance was no longer a necessity, the position was abolished. No additional employees have been employed to assist in this work since the position of Yard Material Clerk was abolished and under these circumstances, the "Statement of Claim" of the Employees should be denied.

(Exhibites not reproduced).

OPINION OF BOARD: The question for determination in this claim is whether Carrier has improperly assigned work belonging to clerks to employees of other crafts.

On February 15, 1949, Carrier abolished the position of Yard Material Clerk at Rook Car Shops, Pittsburgh, Pennsylvania. This position had been in existence for more than 25 years and at the time of its abolition was occupied by J. F. Trust. The Organization contends that the work of the position was reassigned to persons outside of the Clerks' Agreement. The Carrier contends (1) that a part of the work of the position was assigned to Car Department Foremen as work incidental to their positions, (2) that a part of the work was assigned to other employees under the Clerks' Agreement who had been performing similar work, and (3) that the remaining duties of the position were eliminated.

The duties of the Yard Material Clerk, briefly stated, consisted of checking materials delivered to the Car Department, making up material requisitions, making and reporting weekly inventories of materials on hand, keeping records of the daily distribution of materials used, the collecting and filing of order copies and delivery sheets, and the receipting for materials delivered by truck.

The Carrier asserts that the receipting and checking of materials is now being performed by the Yard Material Foreman, Car Shop Clerks and Store Attendants, all of whom are within the Clerks' Agreement. The making of requisitions and material inventories is now, the Carrier states, performed by Car Department Foremen and Assistant Foremen as a part of the incidental duties of their positions. The Carrier also asserts that the checking of materials and the making of daily distribution of material reports is eliminated as it was a duplication of similar work performed by the Car Department Foreman.

The Carrier may in the interest of efficiency or economy abolish positions with propriety unless it violates some rule of the Agreement. It may not as a general rule abolish them and reassign the work to employees not within the Agreement. If a clerk is performing work which could properly be performed by a foreman of another craft as being incidental to his position, it may upon the abolishment of the clerical position flow back to the foreman. Award 2334. Remaining clerical work may properly be distributed to others within the Clerks' Agreement.

We have searched the record for evidence showing that clerical work formerly performed by the Yard Material Clerk is, since the abolition of the latter position, performed by employees outside the Clerks' Agreement who are not entitled to perform it. We have found no such evidence. Not a single position outside of the Clerks' Agreement is pointed out which is now improperly performing work formerly performed by the Yard Material Clerk. The two employees named who checked in materials delivered by truck were not performing work belonging exclusively to the Yard Material Clerk. As a matter of fact, it does not appear that it was work assigned exclusively to clerks. Consequently the claim must fail for want of proof.

The Organization asserts that the refusal of the Carrier to make a joint check of the situation and its failure to call the foreman into conference on the property operates favorably to the claimants. When the evidence is conflicting, the refusal of either party to participate in a joint check or investigation would naturally leave an unfavorable inference. But such refusal does not create such an inference as will overcome a complete want of evidence. In other words, the inference under consideration is not of itself sufficient to sustain a claim. It is one that may be properly used only in resolving the weight of conflicting evidence.

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 a violation of the Agreement is not established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 21st day of July, 1950.