

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, 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 Management violated rules of Agreement between the Carrier and the Brotherhood effective December 1, 1943, amended July 1, 1945:

- (a) When, during the period April 9, 1947—February 23, 1949, the hours of service assignment of the Yard Clerks at Marion, Ohio were rearranged whereby but one of two men on the 2:00 P.M.-10:00 P.M. trick was changed to work from 4:00 P.M. to 12:00 Midnight, thus leaving but one Yard Clerk to protect the service between 2:00 P.M. and 4:00 P.M. during which period work normally attached to said position was performed by a Yardmaster.
- (b) That carrier shall compensate R. D. Whitehead, regularly assigned 6:00 A.M. to 2:00 P.M. Yard Clerk for two (2) hours at rate of time and one-half from 2:00 P.M. to 4:00 P.M. each day, October 3, 1948-February 23, 1949, for work performed by Yardmaster that should have been performed by a clerical worker.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 9, 1947, there was employed at the East Yard Office, Marion, Ohio, the following positions.

1 Yard Clerk	hours	6:00 A.M. to 2:00 P.M.
2 Yard Clerks	"	2:00 P.M. to 10:00 P.M.
1 Yard Clerk	"	10:00 P.M. to 6:00 A.M.

In addition to the clerical force mentioned, there was a Yardmaster working each trick.

Effective April 9, 1947, hours of assignment of the Yard Clerks were changed so that on and after that date the positions were assigned as follows:

1 Yard Clerk	hours	6:00 A.M. to 2:00 P.M.
1 Yard Clerk	"	2:00 P.M. to 10:00 P.M.
1 Yard Clerk	"	4:00 P.M. to 12:00 M.
1 Yard Clerk	"	10:00 P.M. to 6:00 A.M.

During the hours 2:00 P.M. to 4:00 P.M. the Yardmaster on duty performed the clerical work previously performed by the Yard Clerk whose hours were changed from 2:00 P.M. to 10:00 P.M. to 4:00 P.M. to Midnight.

would have that effect and would render the operation of a railroad as a private enterprise wholly impossible.

Carrier protests against and objects to any claim for penalty rates where claimant does not actually perform overtime work. See Third Division Awards 4244, 4534 and 4616.

The Carrier has shown that, under the applicable Agreement between the parties to this dispute, any and all clerical work performed on any day by the Yardmaster is simply work incident to his position and is not work accruing to the craft or class of which the claimant is a member.

The Carrier denies violation of any Agreement Rule and submits that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of the Carrier changing the starting time of one of two yard clerk positions at the Manifest Office, Marion, Ohio, both of which had assignments from 2:00 P.M. to 10:00 P.M. The starting time of one of these positions was changed from 2:00 P.M. to 4:00 P.M. thus making the hours of the assignment thereafter from 4:00 P.M. to midnight. This change was in effect from 4-9-47 to 2-23-49, both dates inclusive. Commencing with 2-24-49 both positions were again assigned the same hours, that is, from 2:00 P.M. to 10:00 P.M.

The basis of the claim is that during the time the change was in effect the clerical work normally attached to the changed assignment was performed by a yardmaster between the hours of 2:00 P.M. and 4:00 P.M. Compensation is asked for R. D. Whitehead, regularly assigned yard clerk from 6:00 A.M. to 2:00 P.M. He asks for an allowance of two hours at overtime for the time between 2:00 P.M. to 4:00 P.M. because, as he claims, he should have been permitted to perform the clerical work which, during this period, he charges carrier improperly let the yardmaster perform. The claim covers a period from 10-3-48 to 2-23-49, both dates inclusive.

The record discloses that when the operating conditions on the carrier required that carrier change the starting time of one of the two yard clerks on duty from 2:00 P.M. to 10:00 P.M. The starting time was changed to 4:00 P.M.

This claim does not involve the abolishing of a position but the change of the starting time thereof which, if properly done, carrier had a right to do. See Rule 26 of the parties' agreement. No complaint is made that the carrier did not comply therewith.

As has been said by this Division, the border line which marks the division of work between clerks and yardmasters is shadowy and not too clear. See Awards 2133 and 3907. This, from the record here, seems particularly true in determining whether certain work is incident to and directly attached to the primary duties of the latter.

We find the work here performed by the yardmasters, of which complaint is made, to be work incident to and directly attached to the primary duties of their position and work of a type which they have always done. While it may also be performed by a yard clerk, and frequently is, it has not been exclusively given to them by their agreement as is evidenced by Rule 1 (e).

Rule 1 (e), as far as here material, provides: "Work incident to and directly attached to the primary duties of another class or craft * * *, may be performed by employees of such other craft or class".

Rule 1 (e) of the parties' agreement is not applicable solely when positions are abolished but is a modification or limitation of the scope thereof.

From the foregoing it is self-evident that no violation of the rules of the parties' agreement occurred when the work here complained of was performed by yardmasters.

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 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

Carrier did not violate 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 28th day of November, 1950.