

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

A. Langley Coffey, 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.

1. When on October 3, 1947 it required B. J. Knowles, Manifest Clerk at Klamath Falls Yard, Klamath Falls, Oregon, to perform the duties of a Yardmaster between the hours of 6:00 P.M. and 9:00 P.M. and 7:00 A.M. and 8:00 A.M., and failed to compensate him at the Yardmaster's rate of pay.

2. That B. J. Knowles shall be compensated for eight (8) hours at the Yardmaster's rate of pay as provided for in the agreement between the Carrier and the Yardmasters' Organization, for October 3, 1947 and each and every day thereafter that he was required to perform Yardmaster's duties.

EMPLOYEES' STATEMENT OF FACTS: On October 3, 1947, B. J. Knowles held a regular assignment of Manifest Clerk in Klamath Yard, hours 4:00 P.M. to 12:00 Midnight. During the hours of 6:00 P.M. and 9:00 P.M. there was no Yardmaster on duty. Mr. Knowles assumed the duties of Yardmaster during this period of time. At various other times Mr. Knowles was required to double over from 12:00 Midnight to 8:00 A.M. and on this shift he assumed the duties of Yardmaster from 7:00 A.M. to 8:00 A.M. due to the fact that no Yardmaster was on duty. These duties were performed under the instructions of the Superintendent of the Klamath Falls Division.

POSITION OF EMPLOYEES: Klamath Falls Yard is operated on 24 hour service. There are Yardmasters assigned at this yard covering the entire period of time with the exception of the period between 6:00 P.M. to 9:00 P.M. and 7:00 A.M. to 8:00 A.M., during which times no Yardmaster is assigned.

Service of the Carrier at these times is no different than at other times of the day. Trains are run in and out at various times. In fact, we are quite sure that if the Carrier will produce the train registers at Klamath Falls Yard for the period since October 3, 1947, the Employees believe this record will show that approximately 30% of all trains arriving at Klamath Falls arrive between the hours of 6:00 P.M. and 9:00 P.M., at a time when no Yardmaster was on duty.

The Carrier will most likely contend that this service was not performed under instructions of the Superintendent. In declining this time slip of October 3, 1947, Mr. Percival, the Superintendent, stated as follows:

doubt that fall clearly on one side of the line or the other but there is a twilight zone in which it is exceedingly difficult to determine whether or not a certain activity is or is not properly yardmasters' work."

From the above it is clear that both divisions have consistently adhered to the position that, "It is exceedingly difficult to determine whether or not a certain activity is or is not properly yardmasters' work," but that "The important thing is that the laying out of the work be done by the yardmaster and that the orders emanate from him".

Reference to the Carrier's Statement of Facts will make clear to your Board that while Mr. Knowles may have transmitted instructions directly to yard crews during the period no yardmaster was on duty, such instructions emanated from the yardmaster who leaves a written line-up before going off duty.

As previously stated, the Carrier has no specific information as to either the detail of the work which the claimant herein alleges he performs and which he considers yardmaster's work nor any direct knowledge pertaining to the rule or rules upon which the employees base their claim.

We must presume that the claim is based upon some rule or rules of the agreement with the Order of Railway Conductors covering yardmasters since, obviously, there cannot be anything in the Clerks' Agreement controlling the payment of a rate of pay covered by an agreement which the Clerks' Organization is not a party.

In a similar case covered by your Award 2133 you held that:

"The provisions of Rule 9 (the rule in the Clerks' Agreement covering rate adjustments) surely do not apply to any work outside the agreement." (Parenthetical insertion ours)

It is the position of the Carrier that no rule of the Clerks' Agreement has been violated and that neither evidence nor supporting data relative to any such violation or any justification for the claim has been furnished by the Employees and that, therefore, the Carrier, of necessity, must await the receipt of the Employees' submission before it can intelligently present any defense to a claim as nebulous as the one herein.

(Exhibits not reproduced.)

OPINION OF BOARD: The Klamath Falls, Oregon, Yard Office is operated "around the clock". There is no yardmaster assigned between the hours 6:00 P.M. and 9:00 P.M. or 7:00 A.M. and 8:00 A.M. Claimant is the Manifest or Interchange Clerk assigned from 4:00 P.M. to midnight. On the theory that the yardmaster's duties are taken over and performed by the clerk, while the yardmaster is off duty, claim is here made for the yardmaster's rate of pay.

The Organization's major premise, and the basis for its claim, is that since there is no yardmaster on duty, for the time in question, the clerk is required to take over the yardmaster's duties "covering this spread". Claim is made for a minimum of 8 hours' pay at the yardmaster's rate, under the terms of the Agreement between the Carrier and the Order of Railway Conductors, for the days in question.

The Carrier puts in issue the validity of the claim by challenging the sufficiency of the proof. Under such circumstances, we believe the true test is stated in Award 2133, wherein this Division of the Board said in part:

"The border line which marks the division between these two branches of work is so shadowy it is incumbent on those who claim a violation of the agreement to show that the yardmasters have in fact

become Clerks and that the Clerks have been entrusted with such supervisory duties that they are in fact yardmasters."

Accordingly, we do not believe we are authorized to hold, under the authority of the Conductors' Agreement, that all work performed by Clerks bordering on a yardmaster's duties entitles the claimant to the yardmaster's rate. Therefore, we believe that the Organization falls into harmful error when it rests its case on the broad allegation and proof that claimant took over the yardmaster's duties outside the yardmaster's regularly assigned hours.

A careful review of the record leaves us with the feeling that the proof is too general, and not specific enough, as to the duties performed and responsibilities assumed at all times. There is evidence, it is true, that in some instances the work performed put vexatious burdens and responsibilities on the Clerk, due to operating conditions, but on the other hand the record before us makes it difficult, if, in fact, not impossible to segregate the duties belonging to the Clerk from those claimed to belong to the yardmaster.

While we are reluctant to disallow a claim on the grounds of insufficient evidence, where there is any valid proof submitted, we do not feel it is incumbent on the Board to seek laboriously for information from the record on which to sustain a claim. We are of the opinion we have such a record here.

On the record before us it is impossible to say at what time claimant was acting as a Clerk and at what time he was acting as the yardmaster. Unquestionably some of the work was laid out by, and orders emanated from, the yardmaster. On what days and what times orders originated with, and work was laid out by, the Clerk is speculative and indefinite. There are irreconcilable statements in the record which make it impossible to determine whether or not the Clerk was at any time a yardmaster.

We are of the opinion that the proof is too general and lacks sufficient definiteness and particularity, for holding that claimant should have a day's pay at the yardmaster's rate, when we are uncertain whether, for the period in question, the Clerk was in fact a yardmaster and not a Clerk, or that the services performed were outside the twilight zone.

Accordingly, the claim must be held invalid by reason of the insufficiency of the proof.

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

The Carrier did not violate the Agreement as contended by the Petitioner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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