

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Clerks' Agreement when it assigned certain Trackmen, not covered by the Clerks' Agreement, to perform work covered thereby, and

(2) That Station Clerk D. N. McCauley at Phillipi, West Virginia, be paid seven (7) hours at punitive rate as claimed on November 3, 1947, and the amounts claimed on subsequent dates.

STATEMENT OF FACTS: On November 3, 1947, and subsequent dates Trackmen were used at Phillipi, West Virginia, to assist in unloading freight from merchandise cars at that point. Time consumed by Trackmen on this date was within a spread of seven (7) hours and on subsequent dates it varied in accordance with the amount of work to be handled. At Phillipi there is one Agent and one Station Clerk, D. N. McCauley, with regularly assigned hours of 7:30 A. M. to 4:30 P. M. The Agent is located at the passenger station where all his services are performed, as he handles mail, express and Western Union work in addition to those necessitated by a block and train order office. The freight station is located about one-quarter mile from the passenger station and the clerk spends all his time at the freight station with the exception of two periods during the day when he is brought to the passenger station to assist in handling passenger trains.

This dispute has been handled in accordance with the provisions of the Railway Labor Act, as amended. No agreement on a settlement thereof having been reached between the parties it is hereby submitted to the National Railroad Adjustment Board for decision.

POSITION OF EMPLOYES: In 1919, four (4) positions existed at Phillipi, W. Va., one (1) Ticket Operator under the Telegraphers' Agreement; one (1) Freight Agent; one (1) Station Clerk, and one (1) Trucker.

In 1930, the position of Freight Agent was abolished, leaving one (1) Agent-Operator; one (1) Station Clerk, and one (1) Trucker. This continued for several years when the Trucker's position was abolished, leaving only the Station Clerk and Agent as presently exists.

trackmen were used as indicated for a total of sixty-one days. On sixty of the sixty-one days set out above trackmen were used for a period of eight hours or more ranging as high as thirty-two hours on one particular day.

The Carrier points out at this time that the claimant found herein worked full time on each date that time has been claimed. It is a further matter of record that on five days on which the petitioner claimed time no trackmen were used at any time whatsoever. Aside from the obvious fact that the petitioner could not possibly have performed work in the amount of time that trackmen were actually used, it is a further fact that Mr. McCauley was not physically able to handle some of the shipments himself due to the size of the shipments and without causing unreasonable delay to shipments.

As previously indicated there has been only one station clerk position located at the Phillipi freight station for a period of over fifteen years. During this period trackmen have been used from time to time to handle that merchandise which is too bulky or of too great a weight to permit the petitioner to handle alone. Prior to the present claim there has been no protest on the part of the employees as to the manner in which this work has been performed.

In view of the above the Carrier requests the Division to find this claim as being one without merit and to deny it accordingly.

OPINION OF BOARD: This dispute comes to the Board in the form of a joint submission of the parties, upon an agreed to Statement of Facts, reading:

"On November 3, 1947, and subsequent dates Trackmen were used at Phillipi, West Virginia, to assist in unloading freight from merchandise cars at that point. Time consumed by Trackmen on this date was within a spread of seven (7) hours and on subsequent dates it varied in accordance with the amount of work to be handled. At Phillipi there is one Agent and one Station Clerk, D. N. McCauley, with regularly assigned hours of 7:30 A. M. to 4:30 P. M. The Agent is located at the passenger station where all his services are performed, as he handles mail, express and Western Union work in addition to those necessitated by a block and train order office. The freight station is located about one-quarter mile from the passenger station and the clerk spends all his time at the freight station with the exception of two periods during the day when he is brought to the passenger station to assist in handling passenger trains."

Additional facts as to the work performed by Trackmen, employees of the Maintenance of Way Department, not within the scope and operation of the Clerks' Agreement, as furnished by the Carrier, are:

"Briefly, the facts giving rise to this instant claim indicate that trackmen were used to assist in unloading freight at the freight station, Phillipi, West Virginia, during November, 1947, fourteen days; during December, 1947, fifteen days; during January, 1948, fifteen days; during February, 1948, seven days; during March, 1948, ten days. Thus in a period of five months trackmen were used as indicated for a total of sixty-one days. On sixty of the sixty-one days set out above trackmen were used for a period of eight hours or more ranging as high as thirty-two hours on one particular day."

The record further shows that four positions existed at this point in 1919, namely, ticket agent-operator, freight agent, station clerk and trucker. Over the years the positions of freight agent and trucker were abolished. The Carrier alleges existence of a general practice at small stations such as Phillipi, where the requirements of assistance are not sufficiently regular to

justify the establishment of a full time position, to hire casual labor or use track forces to extend help to the station clerk when needed. The work in question consisted of the unloading of LCL freight shipments from merchandise cars and not company supplies. The reasons for the assistance would appear to be weight of the shipments, plus quantities and the desire to avoid delays in handling.

This should not be considered a precedent Award because it is based upon the particular set of facts existing at this point during a limited period. Casual employment or use of employees outside the Clerks' Agreement to assist station forces may be justified under other conditions.

To be deserving of application, the practice relied upon in justification by Carrier must be measured by the limits present during its formative period. During 1919, a date prior to the current Agreement between the parties, and for some years thereafter, the type of work in question at this point has been performed by members of the Clerks' Organization. Later, a contraction of the force occurred at Phillipi and the occasional extra work was thereafter handled without complaint in line with the general practice stated above by Carrier. However, the apparent upswing in work volume at Phillipi, reflected by the record, was of such magnitude as to carry this case beyond the scope of the general practice urged in justification by the Carrier. At least during the period of five months immediately following the date of first claim, the infringements upon the usual work duties of the station clerk were substantial and of sufficient regularity as to justify resort to some method of handling other than the expedient recognized under the general practice applicable to sudden emergencies at so-called small stations. See Awards 2506, 3275 and 3744.

Claim is made for "seven hours at punitive rate as claimed for November 3, 1947, and the amounts claimed on subsequent dates."

The facts present, we believe, bring this case within the principle stated in Award 3744, among others, hence the claim will be allowed at the punitive rate, i.e., time and one-half to the extent hereinafter stated. Long standing practice allowed for some outside assistance. Without intending to indicate the permissive limits of such practice but solely for the purposes of this case, we allow the claim for November 3, 1947, and for such dates thereafter that the Carrier's records show that the amount of assistance extended by trackmen exceeded four man-hours per day; allowance of claim at punitive rate to be given for all hours in excess thereof.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 Carrier transgressed the reasonable bounds of the general practice relied upon in justification for assigning trackmen to assist station clerk on November 3, 1947, and upon subsequent dates to be ascertained from Carrier's records.

AWARD

Claim sustained to the extent indicated in the Opinion, *supra*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1951.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 5398

Docket No. CL-5492

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

NAME OF CARRIER: The Baltimore and Ohio Railroad Company.

Upon application of the representatives 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 and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Organization requests an interpretation of the Award heretofore entered in this case. The Organization contends that to comply fully with Award No. 5398 the Carrier must:

“(a) Make a complete search of their records to determine the dates trackmen were used at Phillipi, W. Va., after November 3, 1947, and

(b) Compensate Station Clerk D. N. McCauley at the punitive rate for all time in excess of four man-hours per day for all days where their records indicate that Trackmen were used at Phillipi, W. Va., to assist the Station Clerk, on and after November 3, 1947.”

The Organization correctly states the intent of the Board's majority when sustaining the claim.

The claim is made by the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement. Violations occurred when the Carrier assigned Trackmen to perform certain work which we found subject to the Clerks' Agreement. Part (2) of the claim identifies the claimant employee and fixes the time of commencement of the infringement. **When** subsequent violations occurred can be determined accurately only through resort to the Carrier's records. This is not a fishing expedition to develop claim for employees nor are we concerned here with a shotgun claim covering unnamed claimants. The need of resorting to official time records is illustrated by the following comment from Carrier's argument, page 14 of the docket: "It is a further matter of record that on five days on which Petitioner claimed time no trackmen were used at any time whatsoever."

That the Carrier understood the scope of the Organization's claim prior to the preparation of the joint submission of the parties to the Board is evidenced by the following excerpt from Carrier's argument, page 13 of the docket:

“During conferences on this Carrier's property between the representatives of the employees and this Carrier's proper officer it

has been the position of the employes that Mr. McCauley is properly entitled to seven (7) hours at overtime rates on November 3, 1947, as well as overtime payment on all subsequent dates that Mr. McCauley was denied the opportunity to work overtime because of the presence of trackmen performing work covered by the scope of his agreement."

Despite the wording of the claim itself, it is clear that both the Carrier and the Board Majority shared a common understanding of the questions involved at the time the award was issued.

Referee J. Glenn Donaldson who sat with the Division, as a member, when Award No. 5398 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of November, 1952.