

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

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

(a) The Carrier violated and continues to violate Clerical Agreement No. 7 when on November 6, 1947, it arbitrarily removed work of distributing daily service cards and checking in Shopmen and receiving cards from the Shopmen at the end of their tour of duty, turning such work over to employees not covered by the Clerical Agreement, and

(b) That the said Clerical work shall be returned to the Clerical employees entitled to perform it and that the employee assigned to the position of AAR Clerk at the East End Car Shop, Hinton, West Virginia, with hours from 8:00 A. M. to 4:30 P. M., be paid a call under Rule 34 for each day beginning with November 6, 1947, until such time as the work is properly returned.

EMPLOYEES' STATEMENT OF FACTS: The Carrier's division terminal for the Hinton Operating Division is located at Hinton, West Virginia, at which point the division offices, classifying yards, roundhouse, and repair shops are located. At the east end of the terminal are located the divisional Car Shops where some fifty or sixty Shopmen are employed under the supervision of a Car Foreman to handle repairs to freight cars moving to or through the terminal on which light repairs, such as wheel, brakes, couplings, etc., are needed. The Shopmen are required to "check-in" and "check-out" at the Car Foreman's office when coming on and going off duty, for timekeeping purposes. The system of timekeeping employed is known as the Daily Service Time Card System. Prepunched daily time cards are prepared by clerical employees at the Central Timekeeping Bureau in Huntington, West Virginia, for each Shop employee, showing the employee's name and payroll identification number, and are forwarded to the division point several days in advance of the dates they are to be used.

Prior to November 6, 1947, the work of handling the daily service cards of the Shopmen employed at the Car Shop was assigned to position No. A-6, AAR Clerk, located in the Car Foreman's office. Mr. O. E. Hill, holding seniority on the Group 1 Clerical Roster, Mechanical Department, Hinton District, dating from June 3, 1927, is the regularly assigned incumbent of

"As indicated, the Board is of the opinion that Awards 806, 809, 931, 1314, and 1593 rather than the awards relied on in Award 1295 should control the decision in the instant award.

"The clerical work of timekeeping, when performed by foremen, was incidental to that position. The Carrier had the right to abolish the position of clerk created for the purpose of assisting the foremen when, in its judgment, conditions no longer warranted its continuance and to return the work to the foremen.

"As stated in Award 931:

"... it is only an excess of such work which ever becomes subject to the dispatchers' (clerks) agreement, and when the excess vanishes there is no such work covered by the dispatchers' (clerks) agreement."

"For the foregoing reasons we find no violation of the agreement."

In conclusion this Brief, the Carrier calls attention to the fact that in the instant case it has not abolished the AAR Clerk position. That position is at work today just as it was prior to November 6, 1947, except for changed hours of work. Likewise, the foremen and other supervisors are doing their work, which includes the passing out of daily service cards, within their ordinary tours of duty, so that the net result is merely a reassigning or realignment of the work so as to have it performed in accordance with the plain right and obligation of the Carrier under such circumstances. Award 5331.

We ask that the Board consider the ruinous effect the principle contended for in this case would have in the operation of this or any other road. It would be patently unthinkable to require that a clerk be employed to hand out daily service cards to all employees whose time is reported in this manner. Numerous clerks would be required with nothing else to do during the rest of the day.

The Carrier has shown that there has been no abridging of the rights of the clerical employees, and the claim should be denied.

All data included in this submission have been discussed in conference or by correspondence with the Employee Representatives.

(Exhibits not reproduced).

OPINION OF BOARD: This claim raises the question whether the distribution and collection of daily service time cards at the car shop at Hinton, West Virginia, is work belonging exclusively within the scope of the Clerks' Agreement, or whether as claimed by the Carrier, it is work which may be done by a gang foreman as an incident to his supervisory duties.

The Carrier shows that system-wide the majority of such work is done by non-clerical employees, and the Organization shows that at Hinton, this work has always been done by this clerical position. In addition we have before us a memorandum of agreement, entered into by these same parties as a settlement of a similar dispute at Huntington Shops which had been submitted to this Division as Docket CL-4996. The submission was withdrawn as a result of the settlement, Award 5205

The scope rule in the governing agreement herein is one with clearly defined limits. Paraphrased, the parts important to this claim, read as follows:

(a) These rules shall govern all the following

- (b) positions within the scope of this agreement belong to employes herein covered and shall not be removed—except as provided.

The parties by past practice, and by their various agreements, have demonstrated conclusively that the detail of distributing and collecting time cards at the start of the daytime shift at Hinton, W. Va. is a part of the clerks duties. Removing the work from the clerical job by setting its hours back is a violation of the scope rule and we so hold.

The penalty to be assessed will be based upon that line of cases which holds that if an employe does not actually do the work he will not be accorded time and one-half.

We are of the opinion that the claim should be sustained as to part (a) and that as to part (b) the employe assigned to the position of AAR clerk at the East End Car Shop, Hinton, W. Va. be paid one hour and fifteen minutes at straight time for every day worked since Nov. 6, 1947.

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 Employes involved in this dispute are respectively Carrier and Employes 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 scope rule has been violated.

AWARD

Claims (a) and (b) sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1954.

DISSENT TO AWARD 6444, DOCKET CL-6401

The claim in this dispute is adroitly worded to infer that the manual distribution and collection of daily service time cards is work belonging exclusively to Clerks. However, the record herein proves that such work is not assigned exclusively to clerical employes, even at Hinton, West Virginia.

The Organization's submission contains the following admission:

"The Employes do not dispute the fact that there are some points on the Carrier's vast system where time cards are distributed by other than clerical employes."

At Hinton, Carmen work 'round the clock and, prior to the change, the AAR Clerk on the daytime shift at the East End Car Shop manually dis-

tributed and collected less than half of the total cards used while foremen and other supervisors distributed the remaining daily service time cards.

Significantly, the Opinion and Award of the Majority specifically limit the claim herein to one position, viz., the AAR Clerk on the daytime shift at the East End Car Shop at Hinton, by holding as follows:

"The parties by past practice, and by their various agreements, have demonstrated conclusively that the detail of distributing and collecting time cards at the start of the daytime shift at Hinton, W. Va. is a part of the clerks duties. Removing the work from the clerical job by setting its hours back is a violation of the scope rule and we so hold.

* * * * *

"We are of the opinion that the claim should be sustained as to part (a) and that as to part (b) the employe assigned to the position of AAR clerk at the East End Car Shop, Hinton, W. Va. be paid one hour and fifteen minutes at straight time for every day worked since Nov. 6, 1947."

Thus, the Majority herein concur with the Carrier that manual distribution and collection of daily service time cards is not work belonging exclusively to Clerks. Inasmuch as such work admittedly is not under the Scope Rule of the Clerks' Agreement at other points, nor even at Hinton, and inasmuch as no positions within the scope of the Clerks' Agreement were discontinued as contemplated by Section (b) of the Scope Rule, the Finding of the Majority that the Scope Rule was violated is in error.

Reference is made herein to settlement of a similar dispute at Huntington Shops. That settlement was negotiated, and it does not support the action of the Majority herein.

Reference also is made herein to a penalty to be assessed. There is nothing in the record to indicate that any employe suffered any wage loss and the Agreement contains no rule that provides for a penalty in such circumstances.

The manual distribution and collection of daily service time cards is not work belonging exclusively to any one class or craft. It is, however, work long inherent and incidental to the duties of foremen and/or other supervisory officers. See Award 2334 and others of this Division.

For the above reasons the Award herein is in error and we dissent thereto.

/s/ C. P. Dugan

/s/ R. M. Butler

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ J. E. Kemp