

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

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

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 August 8, 1951, the Carrier failed to allow Arthur Steuber, Assistant Weighmaster at Allouez, Wisconsin to perform overtime work to which he was entitled and instead, had this overtime work performed by an employe outside of the Agreement.

2. That the Carrier now be required to compensate employe Steuber for four and one-half hours at the overtime rate for August 8, 1951.

EMPLOYEES' STATEMENT OF FACTS: Mr. Arthur Steuber is Assistant Weighmaster at Allouez, Wisconsin. His duties consist of weighing cars as they pass over the scales and making and keeping records in connection with his weighing. On August 8, 1951, Employe Steuber performed this work as usual during the eight hours of his assignment. When his eight hours was up, the Carrier failed to call Employe Steuber to continue this work, which had not been finished, and assigned the Agent, Mr. Ebner, to take over and continue the weighing of the cars until the job was completed, which as we understand, required four and one-half hours overtime work.

POSITION OF EMPLOYEES: There is in effect an Agreement with the Carrier containing certain rules which are pertinent to this case and which we are quoting:

"RULE 1. SCOPE

These rules shall govern the hours of service and working conditions of the following class of employes, including employes at King St. Station:

(a) Clerks.

(b) Operators of office machines such as typewriters, calculators, bookkeeping machines, dictaphones, key punch machines, multigraph machines, multilith and other similar equipment.

(c) Other clerical employes such as clerical supervisors and assistants; stores material inspectors and stockmen; station freight

"The insertion of date, station, initial and number, and tare weight is incidental to the duties performed by the Yardmaster and Yard Foreman when acting as Weighmasters.

"In the absence of more explicit language in the agreement, it cannot be held that the practice involved in the instant case constitutes a violation of the agreement, and the claim should be denied."

It is directed to your Board's attention that while many positions are enumerated in the various sections of this rule, nowhere therein is there any mention of "Scale Inspector" or "Weighmaster" although both positions are in existence on this Carrier and "Weighmasters" are generally conceded as being included under the rule, although the weighing of cars is by no means considered as being exclusively their duty as is evidenced by the fact that cars are and always have been weighed by conductors, yardmen, agents and yardmasters.

"Scale Inspectors," who do practically all scale testing, adjusting and repairing, are not covered by the scope rule of any agreement and are assisted in their work, where any assistance may be required, such as in making tests, by practically any class of employe who may be conveniently at hand, including trackmen, agents, telegraphers, or clerks and no question has ever arisen or protest been filed relative to such procedure.

Clearly, therefore, if the regular routine testing of track scales is recognized as being work not exclusively appertaining to positions covered by the Clerks' Agreement, it must be evident that there is even less reason for such claim being advanced in this case, where such testing was being done in connection with weighing equipment not even the property of the Carrier nor in use by it in its regular weighing operations; the tests in question being made to determine the practicability and desirability of installing equipment still the property of its manufacturer.

The Carrier holds, therefore, that the claim of the Employee is without merit and must be denied.

It is hereby affirmed that all data herein submitted in support of Carrier's position has been submitted in substance to the Employee Representatives and made a part of the claim.

OPINION OF BOARD: Claimant, an Assistant Weighmaster, worked the 7 A.M. to 3 P.M. shift. Agent Ebner had similar hours. At 1 P.M. tests were undertaken of an electronic scale. Claimant was relieved by the second trick Weighmaster and Agent Ebner continued his work of assisting with the testing of the scales until 7:30 P.M. The Organization bases its claim exclusively on Rule 37 of the Agreement, reading, in its pertinent parts, as follows:

"When overtime work is required by the Company, the incumbent of the position to which such overtime work is necessary shall be given preference in its performance. . . ."

The Carrier contends that the Claimant performed his regular duties during his shift and that the work had no relation to the work performed by Agent Ebner, which was of an entirely experimental nature. Further, that the experimental work in no way detracted from Claimant's regular work and the results were not used for record, billing or any other Carrier purpose except testing.

A sharp conflict in facts arises over whether Claimant participated in any way with the testing work. This is important in connection with the claimed right to continue on overtime with the work Claimant was doing on the stated date. Except that that be determined a fact, the claim otherwise is clearly without merit because the regular duties of the position were assumed by the second trick Weighmaster who came on duty at 3 P. M. per assignment.

Employees' Reply to Carrier's Reply, we believe, misconstrues a quoted excerpt from the Carrier's Statement of Facts when the author concludes that the Carrier conceded thereby that experimental weighing and the regular weighing was being performed simultaneously by weighmasters. The reference to weighmaster, it seems clear, was only made in connection with regular weighing. Upon this erroneous construction of the Carrier's statement of the facts and the resultant assumption that Claimant was admittedly performing both classes of weighing, the Organization bases most of its argument, which for the reasons above stated we must ignore.

We are left with Claimant's assertion that he did the combined work and Agent Ebner's denial that the Claimant did so; a claim that he performed test weighing on both "A" and "B" scales, although Carrier's assertion that they were located some distance apart was uncontroverted as was the statement of the scale company's representative (Exhibit C-3) that test weighing was only conducted upon "A" scale. The threads of proof are too tenuous to bear the weight of factual determination in this case. This is not a case where all available facts are before us in which event our duty to resolve them is clear. Here it must readily occur to the reader of the docket that essential facts could have been produced but were not and it is not our obligation to supply them through resort to mere speculation. While both parties bear some responsibility for failure to present a convincing proof of essential facts, the burden to do so is upon the party asserting the claim. Failing to discharge such burden, the claims asserted must be denied.

We should not be understood as holding by any statement contained herein, that participation in test weighing, if established, automatically gave Claimant a right to the overtime involved. Proof thereof would only justify us in considering the question which we decline to do on the record before us.

In light of Award 6347 and the statements made by the Organization in its submissions, the question of Scope Rule violation is not before us.

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 the burden of proving a violation of the Agreement was not discharged by Claimant.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 21st day of July, 1954.