

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(a) That Carrier violated rules of the Clerk's Agreement when on or about April 14, 1954 to May 5, 1954, it blanked the seasonal positions of Yard Clerks, second and third tricks, Mitchell Yard Office, Hibbing, Minnesota and assigned all of the duties of said positions to Yardmasters at that point; and

(b) that Yard Clerks Lester L. Dominechetti, Linus G. Martin and Donald H. Baldwin, who had seniority rights to the positions involved shall be paid one day's pay at the going rate for Yard clerks for each and every day that they were denied the right to perform the duties of their positions.

EMPLOYES' STATEMENT OF FACTS: The Duluth, Missabe and Iron Range Railway Company is a subsidiary of the United States Steel Corporation. Its business is largely, though not entirely, confined to the transportation of iron ore by rail from the mines to the Lake Ports of Duluth and Two Harbors, Minnesota, approximately one hundred miles away, for trans shipment by boat to the lower lake ports.

Mitchell Yard Office is located near Hibbing, Minnesota, on the iron range and is a marshalling yard for iron ore trains for movement to the lake ports. This movement is confined to the lake shipping season, normally from April to November.

At Mitchell Yard Office, during the iron ore shipping season, yard clerks have been employed twenty-four hours per day, seven days per week, to perform all necessary clerical work. The duties of the yard clerks on the various shifts were as follows:

"On the 8:00 A. M. to 4:00 P. M. the following jobs were performed. Marking of Trainmen's board, making out Deadhead forms for Trainmen, making Daily Mine reports including Form M-90, M-45, M-46, and M-75, check and record Trainmen's time-slips, make daily report of sand, coal, rock, and etc. Assist in delivering payroll checks and tax statements. Make up daily engine and crew

In Award No. 1849 your Board said:

"It appears that the duties described, if performed by a clerk would be performed under the supervision of the Yardmaster. It is therefore difficult to understand how such a small amount of clerical work performed by the Yardmaster in a department coming under his supervision can be considered other than as incidental to his position. The time according to the showing does not exceed one and one-half hours per day."

There are many other awards which sustain the position of the Carrier and it would only burden the record to cite them all here. It is sufficient to say that the Third Division has often said there are few, if any, employees of a carrier, from the president down, who do not perform clerical work in connection with their regularly assigned duties, and that the performance of such clerical work incident to a position by the occupant thereof, who is not within the scope of the Clerks' Agreement, is not in violation thereof. Also that clerical work incident to a position outside of a Clerks' Agreement may flow from such position to positions under the Clerks' Agreement and then, if it decreases, back to the position to which it was incident. Referring specifically to one other award, your Board said in Award No. 2133 that the borderline which marks the division between these two branches of work (Yardmasters-Yard Clerks) is so shadowy it is incumbent upon those claiming a violation of the agreement to show that yardmasters have in fact become clerks, or clerks have been entrusted with such supervisory and responsible duties that they are in fact yardmasters.

The Carrier petitions the Board to deny this claim.

All matters referred to herein have been the subject of correspondence and/or discussion with the Employees' Representatives.

(Exhibits not reproduced)

OPINION OF BOARD: Before considering this dispute on its merits, it is necessary to dispose of a Motion in this docket to the effect that action be withheld pending the giving of notice of hearing to other parties involved.

In view of a number of awards of this Board and the decision of the Supreme Court of the United States in the case of Whitehouse vs. Illinois Central Railroad, and the finality of this matter (No. 131, October Term of U. S. Sup. Ct., 1954), followed by the dismissal of the cause of action by the United States District Court, the Board now has jurisdiction over the only necessary parties to this proceeding and over the subject matter hereof. Prior Award 5759 of this Board was ill advised.

There exists no conflict between the parties as to the essential facts of this dispute.

Claim is made that the Carrier improperly failed to reestablish Yard Clerk positions on the second and third tricks at Mitchell Yard and permitted yardmasters to perform such duties.

A normal ore shipping season is from April to November, depending on the navigability of the Lakes. During the winter months the duties of yard clerks are assumed by yardmasters, but during the open season on the lakes the Carrier has established yard clerk positions on each of the three tricks. In past years there have been two yard clerks on first trick and one on each of second and third tricks. Complaint here concerns the 1954 season. Between either April 14 or 16 to May 5, at the opening of the 1954 season, only the yard clerk position, first trick, was reestablished by the Carrier. On or prior to May 5 the second and third trick and relief positions were reestablished.

It is alleged that the failure of the respondent to reestablish second and third trick positions at the time the first trick was reestablished was,

and is, in contravention with existing past practice and Rules 1, 2, 3, 4, 5, 14 and 55.

Actually this claim covers a period of some 20 days at the start of the shipping season. There can be no question but that at the start of the season there were no yard clerk positions in existence. They ceased to exist when abolished at the end of the season and existed only when reestablished.

In the past during the winter months the yard clerks' duties were, by agreement, considered incidental to the yardmasters' positions, and, when it (clerical work) increased with the opening of the season, yard clerk positions were created and filled.

No complaint is made of the failure of the Carrier to reestablish a second first trick position. All seasonal work fluctuates. The parties have recognized this by both their past practice and their failure to specifically enumerate the span of the season in the effective agreement.

Bad faith cannot be charged to the respondent here in following past practice. All three tricks were reestablished within a reasonable time when considered in light of a shorter and lower tonnage shipping season. Respondent did not need to establish more yard clerk positions than the exigencies of the service required. Claimants were entitled only to that work which, and when it, existed. They were deprived of none.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1955.