

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

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

**THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Delaware, Lackawanna and Western Railroad, that the Carrier violated the Clerks' Agreement:

1. When effective June 7, 1954, it abolished a clerical position held by George Dougherty at Harrison Yard, and, concurrent therewith, assigned the duties attached thereto, to a Yardmaster, an employe outside the Scope of the Clerks' Agreement, as herein described.

2. The Carrier shall be required to restore the position and work, which was improperly removed from the Scope of the Clerks' Agreement, to employes covered thereby, and that George Dougherty and any other employes who may have been adversely affected by this violation of the Clerks' Agreement shall be reimbursed for all monetary losses sustained as a result thereof, retroactive to June 7, 1954, and until the condition is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 7, 1954, the relevant forces at the Carrier's facility identified as Harrison Yard, located at Harrison, New Jersey, were as follows:

Title	Hours of Service	Rest Days
Yard Clerk	6:00 AM to 2:00 PM	Saturday and Sunday
Yard Clerk	2:00 PM to 10:00 PM	Tuesday and Wednesday
Yard Clerk	10:00 PM to 6:00 AM	Thursday and Friday
Yardmaster	6:00 AM to 2:00 PM	
Yardmaster	10:00 PM to 6:00 AM	

The aforementioned clerical positions, fully covered by the scope and operation of the Clerks' Agreement, were relieved on rest days mentioned above.

The Board in Award 6610, Referee Norris C. Bakke participating, very appropriately expressed the position of the Carrier in this case, when it said:

"It must be obvious that the net result of the Organization's contentions, if sustained, would be to give it the power to veto over the Carrier's right to readjust its operation facilities and labor demands in response to the 'ebb and flow' of the traffic load, and to freeze all positions and wage rates as of a given time. The Carrier has not surrendered to that extent in this docket."

There is no rule, precedent or practice to support the Employees' position in this case. The claim is without merit and should be denied.

All data in support of the Carrier's position have been handled on the property with the Employees' representatives.

OPINION OF BOARD: Prior to June 7, 1954, the Yard force at the Harrison Yard, New Jersey, consisted of a Yardmaster and a Clerk from 6:00 A. M. to 2:00 P. M., a Clerk from 2:00 P. M. to 10:00 P. M., and a Yardmaster and a clerk from 10:00 to 6:00 A. M. Because of a decrease in the clerical work necessary to be performed on the night trick, and the consequent lack of sufficient work for two men, the position of Clerk from 10:00 P. M. to 6:00 A. M. was abolished on June 7, 1954. Some of the duties previously performed by the Clerk at night, such as the preparation of wheelage reports, were assigned to the Clerks on the other shifts. Some other of the clerical duties were assigned to the Yardmaster on the night shift. This claim protests the assignment of clerical duties to the Yardmaster.

The Carrier asserts, without rebutting proof from the Brotherhood, that with one exception, on one night only, when a Yardmaster by mistake made up a wheelage report which the Clerk on another shift had neglected to make up, the Yardmaster has performed only such clerical work as is incident to his duties as Yardmaster and which he performed before the position of Clerk was established and, when necessary, even after the position of Clerk was established.

The Carrier relies on the many decisions of this Board that the Scope Rule of the Clerks' Agreement does not give clerical work exclusively to Clerks. And it further relies on the well-established "ebb and flow" doctrine, to the effect that when the clerical work of a position outside the Clerks' Agreement increases to the point where the position of Clerk must be established, and is established, and subsequently the work decreases to the point where the Clerk is no longer needed, the position of Clerk may be abolished and his duties revert back to the position which formerly performed them.

The Brotherhood does not deny that the Yardmaster position existed long before the clerical position was created, nor does it deny that certain clerical duties previously performed by the abolished clerical position were originally performed by the Yardmaster. The only proof offered by the Brotherhood as to the clerical duties performed by the Yardmaster after the abolition of the clerical job, is a tabulation of the work observed being performed by the Yardmaster on one night. But there is no proof that any of that work was work not previously performed by the Yardmaster before the position of Clerk was established. The Brotherhood has thus failed to meet the burden of proof, and on the basis of the "ebb and flow" doctrine the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 20th day of September, 1957.