

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the provisions of the Clerks' Agreement:

(1) When it required a Messenger-Janitor, a Class "B" employe, to perform Class "A" clerical work of checking tracks, and

(2) That Mr. W. L. Beals, Clerk at Longview, Washington, be paid a two-hour call on each of the following days—March 9, 10, 11 and 16, 1953 and that Mr. G. R. Gardiner, Clerk at Longview, Washington, also be paid a two-hour call on March 12, 13, 17 and 18, 1953, such payment to be at time and one-half rate because the Messenger-Janitor at Longview, Washington, was used Monday through Friday to check cars on Track 13A, and

(3) That the claimants also be paid in like manner for all subsequent days when the Carrier used a Class "B" employe on Class "A" clerical work; that Mr. Beals be paid the next four days from the last date shown above, Monday through Friday only; then Mr. Gardiner the next four days in like manner up to and including July 19, 1954, the violation and practice being discontinued as of July 20, 1954.

EMPLOYES' STATEMENT OF FACTS: Beginning with March 4, 1953, a Messenger-Janitor was required to check cars each day from 12:30 P.M. to 1:30 P.M., this being work attached to the positions occupied by Mr. Beals and Mr. Gardiner, Monday through Friday. The work of checking cars is work to which Class "A" employes have prior right by virtue of their seniority, and we contend that the Messenger, a Class "B" employe, has no right to perform such work.

Mr. Gardiner is shown on the Tacoma Division Class "A" seniority roster with a seniority date of August 22, 1945, his position being that of Yard Clerk at Longview, Washington. Mr. Beals is shown on the same Class "A" roster

Inasmuch as yard clerks employed at Longview have not acquired a right by agreement to check cars on Track 13A and also because these employees prior to March 4, 1953 had not acquired a right by tradition to perform this work, the claim covered by this docket should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees, and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: From March 4, 1953 through July 8, 1954 Carrier used an employee holding a Roster B (Class B) Messenger-Janitor position under the Clerk's Agreement to make yard checks of empty cars placed on Track 13A at Longview, Washington, upon request of the Yardmaster. The Messenger-Janitor, who operated a company car which he used in connection with this assignment, was on a Monday through Friday work week, with assigned hours of 12:00 noon to 9:00 p.m. Commencing July 9, 1954 Carrier used a Roster A (Class A) clerical employee assigned to the freight office at Longview to perform the subject checking on Track 13A. The claim is that the assignment of the Messenger-Janitor to perform the work in question was violative of the Agreement in that such work belonged to Roster A employees, who were available and willing to perform it.

During the period covered by the claim, Claimant G. R. Gardiner was regularly assigned as a Roster A Yard Clerk, Tuesday through Saturday at East Yard, Longview, with scheduled hours of 2:00 P.M., to 10:00 P.M. On Mondays Claimant W. L. Beals served as relief in the position held by Gardiner.

The parties are in dispute concerning whether the subject checking on Track 13A was assigned to Yard Clerks prior to the period of this claim. For the purpose of this case, however, we assume this task had not been assigned to any Roster A employee previously.

Carrier asserts that since the Scope Rule is general in character, a claim by a given class of employees to the exclusive right to perform particular work can only be grounded on tradition and practice. It is urged that since Class A employees had not previously checked cars on Track 13A, the present claim must fail.

The record leads to the conclusion that Class A Clerks have historically checked cars at Longview, and were doing so during the period covered by the subject claim. If there have been any exceptions to this pattern—other than on Track 13A—it has not been brought to our attention. Carrier appears to be contending that tradition and practice is to be considered on a track-by-track basis, rather than for the yard as a whole. We do not think this is a permissible distinction. In our view, the task in question was work accruing to Clerks on the A seniority roster.

There remains the question of remedy. Carrier asserts the Messenger-Janitor did not perform this work daily and continuously during the period in question. There is no evidence to the contrary. We accept Carrier's statement the checking operation consumed approximately one hour when performed, including driving to and from Track 13A. We find, therefore, that Claimant Beals should be compensated in an amount equivalent to one hour's pay at pro-rata rate for each Monday occurring during the period from March 4, 1953

through July 8, 1954; and that Claimant Gardiner should be compensated in an amount equivalent to one hour's pay at pro-rata rate for each Wednesday and Friday occurring during the same period.

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 violated the Agreement.

AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1958.