

Award No. 8782
Docket No. CL-8219

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD 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 the Carrier discontinued using the clerical force to perform clerical work at North Fort Worth, Texas, and on September 3, 1946 the Carrier entered into an Agreement with the Switchmen's Organization to pay the Switch Foreman one hour at pro rata rate of the Switch Foreman's rate of pay effective January 1, 1946, as an arbitrary payment of additional compensation for performing certain work in addition to that of Yard Foreman at North Fort Worth Yard.

(2) That the certain work performed by the Switch Foreman is clerical work and the Switch Foreman being an employe of another craft, the clerical work shall now be returned to the clerical force at Fort Worth, Texas.

(3) That the Carrier be directed by appropriate order to reimburse Mr. V. Mullins, Clerk at Fort Worth, Texas, or his heirs, for eight (8) hours per day at punitive rate at \$228.10 per month, effective November 2, 1946 (plus general rate increases added since November 2, 1946 (plus general rate increases added since November 2, 1946)).

(4) Effective with Mr. V. Mullins' death, September, 1948, the senior available Clerk be allowed eight hours (8 hrs.) punitive time each day, the same as the time requested in claim filed by Mr. V. Mullins.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: As has been noted from a reading of the claim, complaint is made "that the Carrier violated the Clerks' Agreement," when it hired a Switch Foreman to perform some duties that theretofore had been performed by a clerk prior to the abolition of his job.

A careful reading of the record discloses that the work the Switch Foreman is doing now is that of messenger work, which is not sufficiently described as to be identifiable, and the "chalking of cars as to classification, dates and railroad".

Concededly the time required for this extra work imposed on the Switch Foreman does not exceed one hour a day, at least that is all that he is being paid for doing this extra work.

The contention of the Organization is that when the position of which this work was considered a part, was set up, it was placed under the Scope Rule, and could not be taken away from the clerks without negotiation.

It is impossible to determine from this record just who was really doing the work complained of. Half the time the Carrier seems to feel it was being done by a yardmaster, at other times by a conductor in addition to the Switch Foreman but after all, it does not become too important for decision, the question is, does the work involved belong exclusively to the Clerks, and if not was it merely incidental to the work of those who did it. If it is messenger work the employees are complaining of, the word does not even appear in the remaining duties at North Fort Worth performed by the assigned incumbent of this position, and the same is true of the words "chalking cars".

The latest written word we find in the record as indicative of the work actually being done by the Switch Foreman appears in a letter written by the General Chairman to Carrier's Manager of Personnel dated March 9, 1954 from which we quote as follows:

"* * * Mr. Williams advised us he had been performing this work as follows:

"(1) In years gone by the Cotton Belt would call the Yard Office and furnished cars on the interchange tracks to the Yard Clerk. The Yard Clerk would make up a list for switching and the Switch Foreman would use this list to perform his work and when he returned to the Peach Street Yard he would bring the bills covering the cars with him to the Yard Office.

"(2) Later, however, (he did not know the exact date), arrangements were made for the Switch Foreman to go to North Fort Worth, obtain the bills, and from the individual bills he would chalk the cars as to classification, dates and railroad. The information he used was from the bills. In others words, work which was performed by the Clerks had been transferred to the Switch Foreman.

"(3) At a still later date an Agreement was made by the Switchmen's Organization and the Railroad to allow the Switch Foreman one hour arbitrary and claim was filed by clerk Mullins when the company agreed to pay the Switch Foreman for this additional work."

Nothing said in that indicates identity of any "messenger work" outside of Williams having to go to North Fort Worth to "obtain the bills" and while the word "messengers" does appear in Rule 1 Group 1, it will be noticed it does not appear in employes' description of the job that was abolished, and even if it did, no one would seriously argue that "messenger" work belonged exclusively to the clerks. At least no award has been called to our attention so holding.

As to "chalking the cars" mentioned by Williams we have several awards (1708, 3494, 4600) holding specifically that does not belong to the Clerks exclusively, and the words "car chalkers" does not appear in the Scope Rule at all unless the words are synonymous with "checkers" which no one is contending.

A word should be said about Award No. 6284 which the Organization relies upon strongly as supporting its position, but it will be noted that the author of that award was careful to limit it to the factual situation therein disclosed and he found specifically the work involved had "always been exclusively performed by clerks until the change herein set forth was made as it relates to trains 991 and 994."

Another distinction in Award No. 6284 is that there claim was only for a call whereas in our case the Organization invokes "The punitive time" rule, and we feel it is only fair that where that is done that stricter proof should be required of the claim.

We have not overlooked the motion for dismissal and the giving of notice to other parties "involved" urged by the Carrier, but in view of our denial of the claim a ruling on them becomes unnecessary.

The claim is 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 has not violated 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 15th day of April, 1959.