

Award No. 9438

Docket No. CL-8463

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

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

**THE LAKE SUPERIOR TERMINAL AND TRANSFER
RAILWAY COMPANY**

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

1. That the Carrier violates the rules of the Clerks' Agreement at Superior, Wisconsin when it assigns and permits work to be performed by others than employees covered by the Clerks' Agreement.
2. That the Carrier now be required to compensate Joseph C. Brennan, Yardmaster's Clerk, for two hours at the overtime rate for April 4, 1953 and each and every day thereafter that Switch Foreman performed clerical duties in violation of the Clerk's Agreement.

EMPLOYEES' STATEMENT OF FACTS: For many years the clerical employees on this property were unorganized. Effective December 1, 1943, an agreement was signed between the clerical employees and this Carrier. In June 1946 a controversy arose on this property in which the Employees contended that switch foremen were performing work which belonged to our Organization. On June 3, 1946 employees J. C. Stark and R. R. Beggs filed claim identical to the claim here before your Honorable Board. The Employees are submitting as Exhibit "A", a letter written by our Local Chairman to the Superintendent under date of June 8, 1946, which covered that claim. There was considerable correspondence in connection with this claim and on November 6, 1946 the General Chairman received a letter from the President of the Carrier's road which we are submitting as Employees' Exhibit "B", in which a conference was requested. This conference was held at Superior, Wisconsin on December 17, 1946 and was confirmed by the President in his letter of December 30, 1946 (Employees' Exhibit "C"). You will note from this letter of confirmation that the claim was settled and in the third paragraph the President stated very definitely as follows:

"I have issued instructions to Supt. Elmslie to arrange the duties of the Yard Clerks so that they will be available to make check of cars in the terminal yard where yard clerks are employees, and to discontinue former practice of Yard

In light of these considerations, this claim should 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.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the allegedly improper application of a 1946 settlement Agreement.

That Agreement was set out in a letter from the Carrier's then president, which stated in pertinent part:

"The cause for complaint resulted from Switch Foremen checking and booking cars in terminal yards where we have yard clerks employed and it is your contention that whenever it is necessary to check yard or book cars this work should be performed by the clerks instead of by the Yard Foreman.

"I have issued instructions to Supt. Elmslie to arrange the duties of the Yard Clerks so that they will be available to make check of cars in the terminal yard where yard clerks are employed, and to discontinue former practice of Yard Foremen performing this work. At outlying yards such as Tower Bay, Connors Point, etc., the Yard Foreman will continue to book these cars as this work is comparable to road conductors maintaining regular train records."

The very general language of the "Statement of Claim" boils down to a contention that Switch Foremen have done "booking" and "checking" within the "terminal yard" (Belknap Yard) in violation of the 1946 settlement. Carrier denies that this is so.

A major part of the Organization's presentation consists of allegations that Carrier changed its method of operations in 1953. Such a change is deduced from a mid-1952 Agreement between the Carrier and the Switchmen's Union of North America in which an "arbitrary" for "booking" and "checking" was increased from 2 cents an hour to 15 cents an hour.

In addition, on January 1, 1953, Superintendent McDonald issued instructions to Switchmen and Yard Clerks which stated:

"Belknap Yard:

"Cars between roads will be booked by Yard Clerks.

"Cars between Belknap Yard and industries on the L.S.T. & T. Ry. will be booked by the Switch Foremen."

Carrier responds that in fact there has been no change in method of operation. They reply further as follows: (1) that the 1952 Switchmen's Agreement specified, "No new clerical work is to be added to those [sic] now required of L.S.T. & T. switch foremen because of this agreement"; (2) the 1953 instructions were not intended to make any change in methods of operation, but admittedly are confusing.

Carrier's contention is borne out by a "Notice to Switch Foremen and Yard Clerks" stating:

"It must be understood that the instructions carried in Notice posted January 1, 1953 with reference to 'Booking and Marking Cars' must be carried out.

"Switch foremen will discontinue copying car numbers and other information into their foremen's books from switch orders in yard offices, but will book cars and time when set or pulled from industries."

The Organization presented no factual data on methods of operation to show the alleged change until its August 10, 1956 "Reply" which came six months after the original Submission, its reply to the Carrier's Submission, its Reply to Carrier's Oral Argument and was in rebuttal to Carrier's "Reply" to its "Reply" to Carrier's Oral Argument.

This was a little late in the proceedings for factual evidence, itself consisting of a description of events on July 27, 1956, almost six months after the Submission was filed.

Even if the evidence had been presented on the property during attempted settlement and prior to resort to the Board as required by our practices and precedents, it would be insufficient evidence of the asserted charge and violation. All that is shown by it and the Carrier's response is that Switch Foremen make notations for their own use when collecting cars for delivery to industries. This in no way is shown to displace Yard Clerk checking and booking.

The Organization has not sustained the burden of proving its allegations of contract violation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 25th day of May, 1960.