

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Oliver Crowther, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

a. The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it permitted and required H. F. Schaeffer, Assistant Foreman, Electric Locomotive Shop, Wilmington Shops, Delaware, former Maryland Division, to perform clerical work in the office of the General Foreman at that location.

b. The Claimant, Clerk E. F. Taggart, should be allowed eight hours' pay a day, as a penalty, for July 1, 1954, and all subsequent dates until the violation is corrected. (Docket E-982.)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in this case, Mr. E. F. Taggart, is regularly assigned as a clerk at Wilmington Shops, Delaware, former Maryland Division, and has a seniority date on the seniority roster of the present Chesapeake Region

parties to the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

(Exhibits not reproduced.)

OPINION OF BOARD: This controversy stems from the assignment of a "Gang Foreman" or "Assistant Foreman" to assist a "Foreman" in performing work which the "Foreman" had formerly done without objection from employees.

The position of employees can seemingly be summed up with the following points:

1. The Foreman did the work here questioned at the times he had no assistance.
2. The assignment of a clerk to assist him for some fifty-one days created a new position in his office.
3. The temporary assignment made the work "belong" to clerks except when the Foreman was performing it incidental to his supervisory duties and without assistance.
4. That the scope of the rule gives all clerical work to the clerks unless that work is merely incidental to and done by supervisory personnel.
5. That the appointment of an "Assistant Foreman" who did certain clerical work is a violation of the rules.
6. That the work done by the "Assistant Foreman" is clerical.
7. That Claimant is entitled to compensation.

Points 2-7 are controverted by Carrier.

We believe that most of the points will be solved by a statement of facts. Consequently, we devote a good deal of space to that purpose.

We have discarded from our consideration evidence not properly presented on the premises. There are, particularly, two exhibits which might

have been helpful had they been in existence and so presented. One presented by employees and one presented by Carrier were relied upon in ex parte rebuttals for the first time and later stressed in oral argument before the Board.

There is in the file a "Joint Statement of Agreed Upon Facts" which is not too helpful. We allude to it later. There is also a "joint time study" but with two separate reports we will mention them later.

The basis for the present claim extends some years prior to its filing. Some of that history is essential to understanding.

At Wilmington, Delaware Carrier maintained mechanical shops comprised of several separate shops. Among others there were mechanical, clerical and supervisory employees. Claimant Taggart was a clerk assigned to the "General Foreman" "position symbol E 14" working as lead clerk in the "back shop".

J. L. Trowill was foreman "Electric Locomotive Shop" at that location. He had no clerk assigned to his office but performed duties which employees here claim to be clerical in connection with his supervisory position. There is no contention that he should not have done that work.

On November 26, 1950 Claimant was assigned to Trowill's office to assist him in performing that portion of his duties which were clerical and continued working there until January 16, 1951 — a period of fifty-one days. On the later date he was sent back to his former office. No one was, at that time, assigned to assist Trowill with any of his duties. He resumed their performance the same as before the fifty-one day period. No complaint was made by employees.

The reason for the temporary assignment is not clear. It may be that the "General Foreman" had in mind the establishment of a new position as indicated by employees but that his superiors would not agree. It may be equally true that for various reasons, including the time of year, the foreman had more work than he could personally do during that period and needed temporary clerical help. The fifty-one day assignment did not necessarily establish a new position, particularly in view of the facts that no new position was bulletined and that the foreman resumed all of his incidental clerical duties after that period and continued them for many months without assistance.

H. F. Schaeffer then "Gang Foreman" of a different craft, but from the "Electric Locomotive Shop", was later assigned to assist Trowill with his duties. There is a difference in terminology between employees and Carrier but it makes little difference if he is called "Gang Foreman" and later "Assistant Foreman" or on the other hand "Acting Assistant Foreman" and later "Assistant Foreman". It is the work, not the title, that counts. Claimant states that Schaeffer as "Gang Foreman" was assigned to Trowill's office in November, 1951 to do work belonging to clerks. Carrier contends that he was assigned to that office as "Acting Assistant Foreman" more than one year later, December, 1952 to do primarily supervisory work. We do not try to resolve the difference in dates. It is enough to say that Claimant was not immediately replaced by one of a different craft when he was sent back to his former office. And that the foreman for a period of at least

eight months did his own clerical work, the time gap may well have been more. Carrier did not take Claimant from an office and replace him with another employe from a different craft within a short time. The clerical duties of the Foreman both before and after the assignment of Claimant to his office were performed by him alone until Schaeffer was sent to assist him either late in 1951 as employe claims or late in 1952 as stated by Carrier. There is no contention that Claimant lost either time or pay.

Not until January, 1953, more than a year after employes claim Schaeffer was assigned to work belonging to clerks, did the local committee complain. It was at that time employes requested that a new clerical position be advertised. Within the month discussions were had and Carrier denied the request.

Nothing pertinent to this claim appears to have happened for an additional year or until February 17, 1954 when the Division Chairman requested that a representative of employes be permitted to make a check of "certain Gang Foremen and Assistant Foremen . . . to determine if any of these employes were performing duties that accrued to clerical employes". Carrier promptly agreed to the check but it was not made by employes' representative until June 29 and 30, 1954 on which dates the Assistant General Chairman made the check. Shortly after that check and on July 13, 1954 the present claim was instigated and thereafter processed in the usual manner.

The "Joint Statement of Agreed Upon Facts", above mentioned as being not too helpful, in effect merely states that employes made a check and reached certain conclusions. Carrier has not agreed with the conclusions. There is little question that the "Assistant Foreman" performed the eleven items of work set forth in the "Joint Statement". The differences of the parties are those of emphasis, interpretation and conclusion. The items of work are listed as follows:

- "1. Vacations: set up and schedule individual gangs for both C.I.O. and A.F. of L. employes, making a list weekly showing the follow-up.
- "2. Trials, investigations, discipline, etc.
- "3. Accident cases — proper care, papers, etc. Follow through for ten days in conjunction with Safety Director.
- "4. Exercise of Seniority — Passes on qualifications of employes and looks after rights and other duties in connection therewith.
- "5. Checks Budget Accounts for over-runs.
- "6. Looks after garnishments.
- "7. Gives out passes or has gang foreman pick up same.
- "8. Answers correspondence (technical knowledge of the operation).
- "9. Makes estimates for all improvements or modifications on electric locomotives M.P. 48 and M.P. 175-A locomotives.

"10. Compiles monthly information in connection with electric locomotives M.P. 310 covering improvements, betterment of locomotives for a monthly period, etc.

"11. Does some calling of men for work in the absence of the foreman."

Following the unilateral investigation by employees there was the joint time study mentioned above but with two separate reports. The item and time shown on the separate reports are substantially similar, differing mainly in the use of terms. The employees report has incorporated a summary of hours and minutes spent in work within a few broad categories. Carrier has not so done.

Of the eleven items above enumerated employees claim that Claimant performed most of them during his fifty-one day assignment. Employees also compare the eleven items with the items upon the "Common Form" questionnaire containing some fifty items of "Common Work Performed in Various Departments" and contend that therefore the items of work belong to the clerks.

Carrier has discussed each of the eleven items in detail and contends that they are within supervisory work or work incidental to a supervisory position or like in item 10, not performed by the "Assistant Foreman" at all. As to items 1, 2, and 3 Carrier claims that the Assistant Foreman performs supervisory work and then turns the purely clerical duties over to a clerk. As to "Item 4" Carrier states flatly that the work is entirely supervisory; the same is true of "Item 5". As to items 6, 7, 8 and 9 Carrier contends that the Assistant Foreman performed supervisory work and turned purely clerical work over to a clerk. We mentioned item 10 above. "Item 11" — "Does some calling of men for work in the absence of the foreman.", Carrier denies that that work belongs to clerks exclusively. We note that the item is to the effect that the Assistant Foreman made some calls **when the foreman was absent.**

It is obvious that the Assistant Foreman did and does some duties which to some extent are clerical in nature, it is equally obvious that his duties are supervisory to some extent. Employees claim that the work is primarily clerical. Carrier claims that they are almost wholly supervisory.

There are cited by each party numerous precedents which we have examined. It would be folly to attempt to distinguish them since the factual situations vary. The majority of the better reasoned ones hold that the scope of work rules adopted, as here, do not preclude supervisory personnel from doing clerical work incidental to their jobs. There is also inherent in many of those opinions the thought that if the clerical duties incidental to supervisory work become too time consuming then a clerk position should be established. The four hour measure is frequently mentioned. Also frequently mentioned in opinions is that tradition and past practice may be a deciding factor in determining to which craft certain work belongs where the rules define, as here, whom may be considered a clerk, but do not state that clerks are entitled to all work coming within the stated qualifications to be classified as a clerk.

We are of the opinion as mentioned above that the position of Clerk Electric Locomotive Shop was not "established" by Claimant's fifty-one days of duty in that office. We are of the opinion that the fifty-one days did

not establish a traditional right of the clerks to do the work which Claimant there did. The Foreman did that work both before and for many months after Claimant helped him, without complaint by employees.

The controversy actually arose after and because of the appointment of an Assistant Foreman whom among other matters performed certain duties which had been performed by Claimant for a short time many months previously.

Had claimant been pulled from a job and shortly one of a different craft given a title to perform the identical work as a subterfuge for transferring the work from one craft to another our opinion might well be different. That, however, is not here the case.

In addition to the matters mentioned is the fact that Carrier assigned one of a different craft with some supervisory experience and of a higher pay scale to assist the Foreman. We are of the opinion that Carrier decided that it had a bona fide need for an Assistant Foreman with experience and not a clerk. True enough, the Assistant Foreman did some clerical work in connection with his duties. We can not reconcile the thought that if the Foreman properly performed clerical duties without objection that it was and is a violation of the contract for his assistant to perform those same duties in connection with supervisory work.

We are of the opinion that the Assistant Foreman was appointed not as a subterfuge but to actually assist the Foreman in supervisory work including some incidental clerical duties. If it was proper for the Foreman to have performed the same incidental clerical duties it must be proper for the Assistant Foreman to do those same items of work incidental to his duties in assisting the Foreman with his supervisory work.

We do not find from the evidence that a clerical position was established as contended by employees, we do not find that the "Assistant Foreman" was assigned to do work primarily clerical, we do not find that the work done "belonged" to the clerks even though some of it was incidentally clerical. We do find that Carrier appointed an employe with mechanical and some supervisory experience to assist its Electric Locomotive Shop foreman and that the Assistant did some clerical work formerly done by the foreman and for fifty-one days done by claimant many months prior to the assignment of the Assistant Foreman.

As stated above we believe that the facts decide this claim. For that reason we have gone to length in stating but not exhausting all of them.

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 oral hearing was held;

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 as claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1960.