

Award No. 9822
Docket No. CL-9009

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, 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 required and permitted Yard Conductors at Rose Lake Yard, East St. Louis, Illinois, former Southwestern Division, to perform clerical work accruing to Clerks as provided in the Scope Rule of the Clerical Rules Agreement. Yard Conductors are not covered by the provisions of the Clerks' Rules Agreement.

b. The Claimant, R. C. Johnson, should be allowed eight hours pay a day, as a penalty, for December 3, 1953, and all subsequent dates on which the violations occurred between the hours of 2:30 P.M. and 10:30 P.M. (Docket W-1001)

EMPLOYES' STATEMENT OF CLAIM: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes 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 Employes 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.

Mr. R. C. Johnson, the Claimant in this case, is regularly assigned to a first trick Relief Clerk position at Rose Lake Yard, East St. Louis, Illinois, former Southwestern Division. He has a seniority date on the seniority roster of the former Southwestern Division, in Group 1.

in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the 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.

All data contained herein have been presented to the employee involved or to his duly authorized representatives.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The parties have jointly stated the facts of this case as follows:

"The claimant was regularly assigned on 1st. trick to relief position at Rose Lake Yard, with rest days Tuesday and Wednesday.

"On December 2, 1953, the following Notice was posted at Rose Lake Yard by Assistant Train Master:

'Effective at once, Yard Conductors will arrange to secure from the Crew Dispatcher a CT 1030. (Yard Conductor's Report)

'On the above described form, one copy, show the initial and number of each car moved into an industry, indicating loads and empties by (X) or (—) and see that list is turned back to the Yard Master, along with racket, indicating any switching performed.

'In the same manner, make list for each cut moved from industry. Where the entire cut is moved from the industry to one track in the yard, you will so indicate at the top of the list, in place designated. Where the cut is moved to the classification yard and cars on the list are moved to different tracks, show along side of numbers the track car is placed on.

'The above set up is to also cover cars moved to and from Southern Interchange, to and from E. St. Louis Jct. and will include, to those railroads, cars out of Hunter Packing Co.'

"Since the above notice was posted, yard conductors at Rose Lake have complied with the instructions on a 24 hour or around the clock

operation. The Yard Conductors turn the completed CT 1030 forms in at the Yard Office and they are forwarded to the East St. Louis Freight Station. The lists are filed at the Freight Station.

"POSITION OF EMPLOYE: The Claimant, R. C. Johnson, is regularly assigned to a first trick Relief Clerk position at Rose Lake Yard, East St. Louis, Illinois.

"As shown in the Joint Statement of Facts a notice was posted by the Assistant Train Master at Rose Lake on December 2, 1953, instructing Yard Conductors to make lists of cars delivered to Industries. The Yard Conductors also made similar lists of cars delivered to and received from certain connecting railroads in the vicinity of Willows Tower, including the Southern Railway, East St. Louis Junction Railroad and the Hunter Packing Co. The purpose in having Yard Conductors perform this clerical work was to provide records and switch lists for the cut handled. There are no Clerks located in the vicinity where this work is done, and the Yard Conductor's services were to perform clerical work so that Clerks would not have to be assigned.

"We quote from the Train Master's Notice referred to above:

'On the above described form, one copy, show the initial and number of each car moved into an industry, indicating loads and empties by (X) or (—) and see that list is turned back to Yard Master, along with racket, indicating any switching performed.

'In the same manner make list for each cut moved from industry. Where the entire cut is moved from the industry to one track in the yard, you will so indicate at the top of the list, in place designated. Where the cut is moved to the classification yard and cars on the list are moved to different tracks, show along side of numbers the track car is placed on.'

"It is quite plain that the Notice instructed the Yard Conductors to furnish lists to the Yard Master so that switch lists, track checks and interchange report records could be made from the information furnished by the Yard Conductors. After the lists have served their purpose at the Yards, they are sent to the Freight Station and filed as permanent records. The C.T. 1030 Forms were used in an effort on the part of the Carrier to camouflage the real purpose for which they were prepared.

POSITION OF COMPANY: "Information furnished by Conductors on C.T. 1030 Forms covering cars moved from Industries and interchange points is not used at any time or at any location to prepare switch list, track checks or interchange reports as contended by the Division Chairman.

"Each C.T. 1030 Form prepared by Conductors at Rose Lake are turned in to the Yard Master each day and forwarded to the Freight Office at 7:00 A.M., the following morning. The Freight Agent has advised that there is no reason for the C.T. 1030 Forms to be filed as a permanent record.

"The C.T. 1030 Forms are used only for verification of demurrage records maintained by the Demurrage Clerk.

"The C. T. 1030 Form does not eliminate any work required of Clerks at Rose Lake or East St. Louis Freight Station. The Industry Clerk checks all industries for demurrage purposes and Clerks at Rose Lake make a track check of all cars moved from Industries and Interchange tracks to Rose Lake Yard.

"The following is contents of lists of C.T. 1030 Forms prepared by Conductors at Rose Lake and C.T. 362 Form (Track Check) prepared on the same cut by Clerks in Rose Lake Yard, which moved from Industries and Interchange point for a representative, dates February 1, 2, 1955.

**Conductor C.T. 1030 List from
East St. Louis Jct. R. R.
2/1/55**

Wab	15365	—	Stock
—	15057	—	"
—	15010	—	"
MP	52398	—	"
NOTM	54111	—	"
MP	52053	—	"
RI	77414	—	"
TNO	15205	—	"
—	15072	—	"
—	15965	—	"
—	15128	—	"
W of A	19076	—	"
—	15058	—	"
ATSF	86965	—	"

**Conductor McKinney
Engine 9184 — B 3
7:05 P. M.**

CT 1030 2/2/55

**Conductor Bettonville from
Stock Yard 12 Midnight**

RI	—	77384
SRL	—	5967
ARL	—	723
TRV	—	12148

**CT 1030
Conductor Banford
National Stock Yard**

PA	—	134873	—	Stock
WAB	—	15063	—	"
—	—	15263	—	"
MKT	—	47261	—	"

**Clerks C.T. 362 Check from
East St. Louis Jct. R. R.**

Wab	15365	—	Stock
—	15057	—	—
—	15010	—	—
MP	52398	—	—
NOTM	54111	—	—
MP	52053	—	—
RI	77414	—	—
TNO	15205	—	—
—	15072	—	—
—	15965	—	—
—	15128	—	—
W of A	19076	—	—
—	15058	—	—
ATSF	86965	—	—

**Track Check made by Clerk
C. W. Warren 7:20 P. M.**

CT 362

**Clerk R. L. Long — #1
Interchange Track 12:20 A. M.**

RI	—	77384
SRL	—	5967
ARL	—	723
TRV	—	12148

**CT 362
Clerk C. W. Warren**

PA	—	134873	—	Stock
WAB	—	15063	—	"
—	—	15263	—	"
MKT	—	47261	—	"

"The CT 1030 Form is prepared for the sole purpose of accounting for cars moved from Industries and Interchange points which are placed at other industries before the Cut reaches the yard and for

cars moved from one industry to another after demurrage check has been made each morning. The CT 1030 Form is never used for any purpose other than that of verification.

"There is no violation of the Clerical Schedule when Conductors list cars handled by them at points where Clerks are not employed or have never been employed as in the instant Claim. Clerks have never been employed at Industries or interchange points to list cars moved by train crews.

"The work performed by the Conductor was incidental to his Conductor's duties in that the CT 1030 Form indicated only the cars handled by his crew."

The issue before us is whether the Carrier violated any rule of the Clerks' Agreement when it assigned Yard Conductors the duty of reporting information relating to the movement of cars in interchange service, and to certain industries, on Form C.T. 1030 during the period from December 3, 1953 to May 25, 1955.

Admittedly Form C. T. 1030 is commonly used by Yard Conductors in reporting the movement of cars. Such is incident to and directly attached to the work performed by these Conductors. That reporting of car movements may also be assigned to clerks is not proof that the supplying of this information by Conductors is a violation of either the Scope Rule of the Clerks' Agreement or Rule 3-C-2 (a), paragraphs (1), (2) and (3). The latter rule applies to situations where a position covered by the Agreement has been abolished. There was no abolished position involved here. And the Organization has failed to prove either that this work is not incidental to the Yard Conductor's work or that it is work reserved exclusively to those covered by this Agreement. (Award 9781)

The claim cannot be sustained.

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 Agreement 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 15th day of February 1961.