

Award No. 9971
Docket No. CL-8643

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
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Violated the provisions of the Clerks' Rules Agreement at Wisconsin Rapids, Wisconsin, when it assigned work covered by the Clerks' Agreement to persons not covered by that Agreement.
2. Return all the clerical work that has been transferred to employees outside the scope and application of the Clerks' Rules Agreement at Wisconsin Rapids to employees covered thereby.
3. Compensate Employee L. B. Reardon at the time and one-half rate of his regular clerical position for five hours and twenty minutes for each Sunday and holiday that regularly assigned clerical duties of Position #76 are transferred to and performed by a custodian from January 1, 1955 until the violation is corrected.
4. Compensate Employee L. B. Reardon at the time and one-half rate of his regular clerk's position for two hours for each Saturday that regularly assigned clerical duties of Position #76 are transferred to and performed by a custodian from January 1, 1955 until the violation is corrected.
5. Compensate Employee L. B. Reardon at the time and one-half rate of his regular clerical position for an additional two (2) hours each day that regularly assigned clerical work of Position 589 is performed by the second trick operator from January 3, 1955 until the violation is corrected.
6. Compensate Employee L. B. Reardon at the time and one-half rate of his regular clerical position for two (2) hours for each Saturday subsequent to January 1, 1955 that the first trick operator performs regularly assigned clerical work of Position #76 until the violation is corrected.

7. Compensate Employee L. B. Reardon at the time and one-half rate of his regular clerical position for an additional one (1) hour for each of the following and all subsequent days that cars are weighed by a conductor at Wisconsin Rapids until the violation is corrected:

Jan. 3, 4, 5, 6, 7, 11, 12, 13, 15, 17, 18, 19, 20, 24, 25, 26, 27, 1955.

8. Compensate Employee G. R. Hodges and all other employees in Seniority District #37 for all loss sustained directly and indirectly as a result of the discontinuance of clerical Position 589 and the transfer of clerical work covered by the Clerks' Rules Agreement to employees not covered thereby from January 1, 1955 until the violations are corrected.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a regularly established position of Car and Bill Clerk at Wisconsin Rapids, Wisconsin. The regular occupant of this position is L. B. Reardon. This is a five-day position with hours of service from 5:30 a. m. to 2:30 p. m., and the regularly assigned duties consist of the following work:

Check and handle mail and baggage to and from Train 217.

Sell tickets for Train 217 and book ticket numbers in ticket register.

Check, clean and fill the furnace.

Make out switch lists for yard switch engine.

Book cars in car book.

List cars on average agreement forms.

Make out symbol passing and arrival notices.

FCD of freight cars.

Book cars on interchange passing report Form 1222.

Make out Form 37 report.

Make out daily jct. forwarded report of cars to which The Milwaukee is an intermediate carrier.

Make daily interchange of cars Form 104 to the Soo Line, C&NW Railway and the GB&W Railway Co.

Handle mail and baggage for Train 200.

Make switch lists of industries empties, bill all empties and industries loads.

Prior to the 40 Hour Week Agreement the Car and Bill Clerk worked six days per week, Monday through Saturday, with a call on Sunday. He opened up the depot each morning at 5:30 a. m. and sold tickets, booked tickets in the ticket register, did cleaning and took care of the furnace. He also handled mail and baggage on and off Train 217.

the abolishment of Position #589. We have previously commented upon that portion of the claim reading "and all other employees" and we again assert that such claim is improper and should be dismissed. As to Employee Hodges, we should like to point out that following the abolishment of Position #589 at Wisconsin Rapids he obtained position of station helper at Minocqua, Wisconsin and in January 1955 he enlisted in the armed forces and is still in Military Service at the present time.

The Carrier contends that there was no violation of the Clerks' Agreement when it abolished Position No. 589 at Wisconsin Rapids, Wisconsin nor was work belonging exclusively to employees covered by the Clerks' Agreement transferred to employees outside that agreement.

We respectfully request that the claim in its entirety be denied.

All data contained herein has been submitted to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to May 1, 1954, the Carrier maintained the following positions at Wisconsin Rapids:

TITLE	POS. NO.	ASSIGNED HOURS	ASSIGNED REST DAYS
Agent	106	8:00 A. M.-5:00 P. M.	Saturday and Sunday
1st Operator	107	7:30 A. M.-3:30 P. M.	Saturday and Sunday (Filled on Sat. by Relief Operator)
		(works call on Sundays from 12:30 P. M.-3:30 P. M.)	
2nd Operator	108	3:30 P. M.-11:30 P. M.	Saturday and Sunday (Filled on Sat. by Relief Operator)
		(works call on Sundays from 8:30 P. M.-11:30 P. M.)	
Chief Clerk-Cashier	11	8:00 A. M.-5:00 P. M.	Saturday and Sunday
Car and Bill Clerk	76	5:30 A. M.-2:30 P. M.	Saturday and Sunday (works call on Saturday from 10:00 A. M. to 12:00 noon)
Warehouseman	13	8:00 A. M.-5:00 P. M.	Saturday and Sunday
Yard Checker	589	8:00 A. M.-5:00 P. M.	Saturday and Sunday

On May 1, 1954, due to a substantial reduction in the volume of business at this station, Position No. 589 was abolished. The issues now before us involve the reassignment of duties at Wisconsin Rapids at the time of this readjustment. This involved both the remaining work of the Yard Checker position (No. 589) and some of the duties which had been assigned to the holder of the Bill Clerk position (No. 76).

At one time the duties of the latter position included, among others, the following:

Open up the depot each morning at 5:30 A. M.;

Check, clean and fill the furnace;

Check and handle mail and baggage to and from Train 217;

Make switch lists of industries empties, bill all empties and industries loads.

There was also employed at Wisconsin Rapids a custodian, not covered by the parties' Agreement. The time of the introduction of the custodian's position is a matter of some dispute, the Organization contending that it was established after the 1949 Agreement, at which time the 40-hour work week was included as a new feature; the Carrier contending that the custodian had been employed before the September 1, 1949 Agreement, but only during the months of cold weather. At any rate, it is acknowledged that for a number of years before and after the filing of the instant claim, the custodian performed duties which included tending the furnace, cleaning the office and turning on the lights when necessary for the convenience of patrons who arrived early. Some time after the present claim was filed the custodian's position was abolished, after the installation of an automatic furnace control system, and an electric timing device for turning the lights on and off.

The duties remaining from Position No. 589 which are in dispute are the following:

"Get line-ups and make pickup lists for train pickups and bill any empty cars in the line-up."

This work was given to the second trick operator. Because of this, the Carrier has raised the third party issue. Notice was given and date of hearing was scheduled. Neither of the two organizations sent a representative to the hearing. Thus we may consider the third party issue as having been disposed of, except that the Carrier still insists that its agreement with the Telegraphers' Organization is a matter of pertinent evidence, since we must decide whether or not the work in question is reserved exclusively to those covered by the Clerks' Agreement, or may be performed by members of either or both organizations.

Since we are concerned only with the question as to whether there has been a violation of the Clerks' Agreement, we do not regard an agreement with another organization as a proper part of the record before us. Award 9658.

Yet another issue before us is the claim that the Carrier violated the provisions of Memorandum No. 3 when it required or permitted a conductor to weigh cars at Wisconsin Rapids, where there are regularly assigned clerical employees. The Carrier takes the position that members of the train crews may perform such duties in the absence of a member of the Clerks' Organization. That is, during the off hours of the Clerks at a given station, the conductor or others of the train crew, may weigh cars. The Organization takes the position that such weighing of cars can properly be performed by the conductor only at locations where no clerk is assigned; that at stations such as Wisconsin Rapids, the appropriate clerk should be called in or held over to perform these duties.

Thus we have two principal issues:

1. Whether the Carrier violated the parties' Agreement of September 1, 1949, when it assigned to members of the Telegraphers'

Organization the performance of certain duties previously performed by members of the Clerks' Organization; and

2. Whether there was a violation of the provisions of Memorandum No. 3 when the Carrier permitted conductors to weigh cars during the hours when Claimant Reardon was not on duty.

Rule 1(e) of the Agreement provides in pertinent part as follows:

"Positions within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57."

Rule 57 specifies the effective date of the Agreement and then provides that all rules, working conditions and practices (except those not in conflict with this agreement) "shall remain in full force and effect until it is changed as provided for in the Railway Labor Act as amended."

This Board has previously held, in matters involving the same parties, that it is incumbent upon the Organization to prove that the Claimants have the exclusive right to perform the work in question. Award 9220.

The question now to be determined is whether the work done by the Agent and the Custodian after the abolishment of one position under the Clerk's Agreement was the exclusive right of Clerks to perform. The record does not support the contention that the duties of opening the depot, doing the cleaning and taking care of the furnace has been work exclusively performed by the occupant of Clerical Position No. 76, at this location. The Carrier also has certain one man stations run by Agents, who perform all such duties. The Organization does not deny the Carrier's right to abolish positions when a reduction in business requires it. Any such reduction in force calls for some reassignment of the remaining work. Thus we find no basis for sustaining Reardon's claim with respect to the type of custodial work here involved.

Similarly we do not find support for the exclusive right to handle mail and baggage on and off Train 217. Such work may be performed by Clerks when available, but it may also be performed by others during the Clerk's absence. Award 8256. As stated in Award 5877:

"The handling of U.S. Mail comes under the control of the Post Office Department of the U.S. Government and as such cannot be claimed by any railroad Organization. It may under certain conditions become a part of the work of an Organization."

With respect to the claim that the Carrier violates the Agreement when the first trick operator makes out switch lists, we are also on record in previous awards holding that such work may be performed by either Clerks or Telegraphers. Award 9192 and cases cited. In fact, the Carrier has asserted, without apparent contradiction, that the Clerks only performed the work of getting line-ups and making switch lists at Wisconsin Rapids for a few months, early in 1954, between February and May, when they shared this work with Telegraphers. Prior to that time this work had been performed by the road crews.

A further contention is that the assignment of the work of getting line-ups and making pickup lists for train pick-ups to the second trick operator, after abolishing Clerical Position No. 589, violates the Scope Rule of the Agreement. Admittedly this work is clerical in nature. But the record does not establish proof that such work has been exclusively performed by members of this Organization on this or other Carriers' property. In Award 9328 we held that such work does not belong exclusively to Clerks and, in fact, has been performed by conductors in some instances. See also Award 6364.

As to the duties of billing empty cars see Awards 1554, 7078, 7590 and 8005 in which we have indicated that such duties may be performed by members of other crafts where Clerks are not assigned, or when they are on their assigned rest days.

We come now to the claim in behalf of the occupant of clerical position No. 76, for an additional one hour's pay at the punitive rate of time and one-half for certain dates when cars were weighed by a Conductor. Memorandum No. 3, which is part of the parties' current Agreement reads, in part, as follows:

"It is agreed that while the designation 'Weighmasters' is being placed in the Scope Rule, present practices (as outlined below) with respect to weighing cars are to remain in effect, with the exception that in those cases where a clerical employe is on duty in the yard in which the scale is located, the clerical employe will weigh the car, or cars:

Division	Location	Weighing Handled By
* * * *	* * * *	* * * *
LaCrosse & River	* * * *	* * * *
* * * *	Wisconsin Rapids	Trainmen, Clerk
* * * *	* * * *	* * * *

(Emphasis ours.)

Any reasonable interpretation of this language suggests that both Trainmen and Clerks may weigh cars at Wisconsin Rapids; but that when a clerical employe "is on duty in the yard in which the scale is located" he may weigh the car, or cars. This in no way supports Claimant Reardon's assertion of the exclusive right to weigh cars on either his assigned rest days, or at any other time after his regularly scheduled hours.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1961.