

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

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

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the Rules of the Clerks' Agreement at Lorain, Ohio, when on August 10, 11, 24, 25, 1957 and subsequent dates, Carrier required and permitted an individual not covered by the Rules of the Clerks' Agreement to perform work on position of Messenger, covered by all the Rules of the Clerks' Agreement, and

That Carrier shall compensate Dominic Colella, Messenger, for a day's pay for August 10, 11, 24 and 25, 1957, and all subsequent dates until such time as violation complained of is corrected. (Claim #LT-38)

EMPLOYEES' STATEMENT OF FACTS: Prior to August 10, 1957, the work of carrying messages, including the picking up of Yard Checks at various locations and other matters has been an integral part of the Messenger assignment five days per week. The Demurrage Department of the National Tube Division of the United States Steel Co. was also on a five-day week basis.

On or about August 4, 1957, the Demurrage Department of the National Tube Division of the United States Steel Co. wanted the information seven days per week. On August 10, 11, 24 and 25, 1957 and subsequent dates the Carrier permitted and required an employe of the National Tube Division to pick up Yard Checks of the East Yard, South Yard, Coal Yard, North Side, Blooming Mill and Pipe Mills from East Yard Office, also picked up Blast Furnace, Receiving Yard, Open Hearth, Coke Plant and Coal Handling Yard Checks from West Yard Office and took them to Cartwright's office, Box 11 of the National Tube. These duties constitute an integral part of position #260, Messenger, and are performed by him Monday through Friday of each week.

This matter was handled at the local level and on September 23, 1957, the matter was appealed to the Supervisor of Labor Relations. The claim was denied on October 4, 1957. See Employees' Exhibit #1. The facts in this claim were not disputed and claim was denied on the basis that the National Tube Division employes were not under the jurisdiction of the Carrier.

Under date of October 15, 1957, claim was appealed to the highest officer

of such articles by a third person cannot be considered as exclusively clerk's work, particularly when, as in this case, the delivery of the yard checks serves no Carrier function, but is for the sole convenience of the Industry. It could not be contended that the Scope Rule would be violated when a Mail Carrier for the United States Postal Service picks up or delivers mail at the Carrier's office; and we believe that the picking up of the yard checks in the instant case by an Industry employe for delivery to the Industry is a parallel situation. This is particularly true in view of the fact that in the past the delivery of communications between the Carrier, the Industry, and connecting railroads has not been performed exclusively by Carrier's messenger.

The Scope Rule does not by its terms, nor was it ever intended to, restrict the Industry from using employes under its jurisdiction to pick up or deliver mail, switch orders, yard checks, or other documents to suit its own convenience.

For the foregoing reasons, it is respectfully submitted that this claim must be denied.

It is hereby affirmed that all data submitted in support of the Carrier's position have been submitted in substance to the employes or their duly authorized representatives and made a part of the particular case in dispute.

OPINION OF BOARD: Claimant held a first turn position titled "Messenger" (mail carrier) scheduled to work Mondays through Fridays. He carried mail and other papers between the railroads and departments and to the U. S. Post Office and for some time, apparently, as part of his assignment he delivered daily copies of yard checks, Mondays through Fridays of each week to Box 11 of the National Tube Company, a Shipper, who used the facilities of the Carrier. The delivery thereof was at the request of National Tube Company. There is no question but that such services as performed by Claimant in delivering such yard checks was Messenger work and comes within the Scope Rule. There is no showing that the delivery of such yard checks to the Tube Company in any way inured to the benefit of the Carrier. The yard checks are made for the Carrier's own use but copies were furnished the Industry for the latter's use and convenience.

It further appears that the Shipper, in early August, 1957, desired the copies of the yard checks on Saturdays and Sundays of each week and, further wanted the daily Monday through Fridays yard checks at 9:00 A. M. instead of a later hour at which the Messenger made delivery. From that time on Shipper picked up some of the yard checks during the week and all of them on Saturdays and Sundays.

Inasmuch as the delivery of said yard checks was not any part of the business of the Carrier and was done only on the request of the Shipper, it is difficult to understand why Claimant would be entitled to compensation for Saturdays and Sundays, when he did not work. The only reason it was part of his work to deliver such reports week days was that Carrier had instructed him to do so. It was not, in any sense, Carrier's work, but was done solely at the request of the Shipper. The latter neither requested nor demanded delivery of said yard checks on Saturdays or Sundays from Carrier; it simply notified Carrier that its own employes would pick them up on Saturdays and Sundays.

The Shipper could, at any time, have requested the cessation of the delivery of said yard checks by Carrier and could have made any arrangements it wished, to pick them up, have them mailed or any other method it wished.

The fact that these deliveries were made on week days by the Carrier does not change the character of the work, nor the right of the industry to have its employes perform it. (Award, 13368, First Division, Awards No. 2425, 7194, Third Division.)

The Carrier has not arbitrarily or otherwise removed work from the Agreement and the claim must be denied.

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 Employe involved in this dispute are respectively Carrier and Employe 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 there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1961.