

Award No. 10859
Docket No. CL-10798

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, 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 December 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 26, 29, 30, 31, Carrier required and permitted an employe not covered by the Clerks' Agreement to perform work on positions of Messenger covered by the rules of the Clerks' Agreement, and

That Carrier shall compensate C. J. Murray, Clerk, for a day's pay for December 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 26, 29, 30 and 31. (Claim #568)

EMPLOYES' STATEMENT OF FACTS: Prior to November 15, 1957, the employes had as a part of their duties for many years prior to the first agreement with the Brotherhood on the Lake Terminal Railroad, dated February, 1945, the handling of switch orders received from the National Tube Division, U. S. Steel Co. at Lorain, Ohio. Prior to November 15, 1957, the National Tube phoned their switch orders to the Weighmaster-Clerk on duty on each trick, this is a three-trick, round-the-clock operation, who took down the orders. The National Tube Co. would then confirm the phone orders by sending written switch orders to the Weighmaster at #6 Scales. Effective 7 A. M. Friday, November 15, 1957, the position of Weighmaster #6 Scales, 3 P. M. to 11 P. M. was abolished, but retained the position of Yardmaster on the 3 P. M. to 11 P. M. trick, North Yard, Lorain, Ohio. The National Tube Co. at the same time moved their Dispatcher to an office adjacent to the East Yard Office where formerly the Dispatcher was close to the #6 Scale Office and delivered orders to same.

The duties of the Weighmaster on #6 Scales abolished was to separate the switch orders peculiar to the North Side, namely separate original order from two copies and hand the original to the Yardmaster stationed there for his use in programming switch crews and the Weighmaster then delivered the balance of the orders to the Clerk at the East Yard Office who processed

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 employees or their duly authorized representatives and made a part of the particular case in dispute.

OPINION OF BOARD:

THE FACTS

Effective 7:00 A. M. Friday, November 15, 1957 the position of Weighmaster #6 Scales, 3:00 P. M. to 11:00 P. M. was abolished at Lorain, Ohio.

POSITION OF THE EMPLOYEES

That this claim involves the application of Rule 1 (Scope) and Rule 50 (Effective Date and Changes) of the current Agreement dated October 1, 1956.

Rule 1 (Scope) reads as follows:

"These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees, subject to such modifications as are included herein. Positions or work coming within the scope of this agreement belong to the employees covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto.

"In the event any work which is now performed by manual operation should be transferred to mechanical operation, the operation of such mechanical devices, of whatever nature they may be, will be performed by employees covered by this agreement; the rate of pay and method of handling such work to be a matter of negotiation at that time."

The Organization contends that Rule 1 (Scope) specifically covers all Employees of the craft or class of clerical, office station and storehouse Employees. That the Agreement under Rule 1 further provides that positions or work coming within the scope of the Agreement belongs to the Employees covered thereby and the Agreement is specific in that nothing in the Agreement shall be construed to permit the removal of work or positions from the application of the rules. That the only way that work or positions can be removed from the Scope and application of the Agreement is by Agreement between the parties as provided in Rule 50.

Rule 50 (Effective Date and Changes) reads as follows:

"This agreement shall be effective October 1, 1956 and supersedes all previous and existing agreements covering employees of the craft or class now represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, except as such agreements are continued in effect by specific provision therefor in this Agreement or in separate Memoranda of

Agreements, and shall continue in effect until changed as provided herein or in accordance with the Railway Labor Act, as amended.

"Should either party to this Agreement desire to revise or modify these rules, thirty (30) days written advance notice, containing the proposed change, shall be given to the other party and conference shall be held within thirty (30) days of date of said notice, unless another date is agreed upon; further conferences, if necessary, shall be held as promptly as possible and in compliance with the Railway Labor Act, as amended."

That messenger work is exclusively the right of the Employees covered by the Clerks' Agreement. Messengers are specifically referred to in Group 1 of Rule 1 and that there is no other Organization on the Lake Terminal Railroad having Messengers within the Scope of their Agreements, therefore the work is exclusively the rights of clerks.

Prior to November 15, 1957, the National Tube Division, U. S. Steel Company at Lorain, Ohio phoned their switch orders to the Weighmaster-Clerk on duty on each trick who took down the orders. The National Tube Company would then confirm the phone orders by sending written switch orders to the Weighmaster at #6 Scales. The duties of the Weighmaster on #6 Scales, abolished, was to separate the switch orders peculiar to the North Side and hand the original to the Yardmaster.

The National Tube Company on November 15, 1957 moved their dispatcher to an office adjacent to the East Yard Office where formerly the dispatcher was close to the #6 Scale Office.

Under the new set up, the East Yard Clerk received the orders from the National Tube Company dispatcher, and separated same, handing the originals to the Transportation Supervisor who then took the original order pertaining to the North Yard and handed same to the Yardmaster there.

Transportation Supervisor is a new position not covered by the Clerks' Agreement created on November 15, 1957. Work herein claimed was returned to Clerks on January 1, 1958.

POSITION OF THE CARRIER

The handling of the original copies of switch orders by Transportation Supervisor did not require Messenger service. This handling of the originals was directly connected with the performance of his duties: namely, planning the work of the Yardmaster, handing it to the Yardmaster, receiving it back from the Yardmaster after the required work was performed and checking the completed original before handing it to the Yard Clerk.

The handling of the original copy of the switch order by the Transportation Supervisor is an incidental and integral part of the performance of his function.

The only change effected on November 15, 1957 when the North Side Weighmaster's job was abolished, was that the sets of orders were delivered by the Industry to the East Yard Office instead of to the North Side, and all clerical work in connection therewith was performed by the clerk in the East Yard Office.

OPINION

The crux of this dispute is whether the delivery of an original copy of a switch order by the Transportation Supervisor to the Yardmaster, who is under his supervision, in fact constitutes messenger work or is an incidental and integral part of the relationship between the Transportation Supervisor and the Yardmaster. To an extent there is always some overlapping of duties and it is incumbent upon the Organization to demonstrate that the delivery of the original copy by the Transportation Supervisor was clearly in the role of messenger and that he has in fact become a messenger. See Award 7426, 2133, 3907, 5112 and 5135. This the Organization has not demonstrated.

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;

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 19th day of October 1962.