

Award No. 12360
Docket No. CL-11988

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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:

1. Carrier violated and continues to violate the Clerks' Rules Agreement at Cedar Rapids, Iowa, when it requires and permits Yardmasters, Switchmen and employees of the C&NW and CRI&P Railroads, all of whom are outside the scope rule of the Agreement, to perform work within and previously performed by Yard Clerks covered by the Agreement.

2. Carrier shall return the clerical work transferred to the Yardmasters, Switchmen, C&NW and CRI&P employees to the scope and application of the Clerks' Agreement and the employees covered thereby.

3. Carrier shall be required to compensate Employee K. H. Freeman, occupant of Chief Yard Clerk Position No. 36, for eight (8) hours at the time and one-half rate of Position No. 36 for each day retroactive sixty (60) days from June 22, 1959 and for each day subsequent thereto that work covered by the Clerks' Agreement is performed between the hours of 4 P.M. and 8 A.M. by persons not covered thereby.

4. Carrier shall be required to compensate Employee J. J. Trimble, occupant of Yard Clerk Position No. 38, for eight (8) hours at the time and one-half rate of Position No. 38 for each day retroactive sixty (60) days from June 22, 1959 and for each day subsequent thereto that work covered by the Clerks' Agreement is performed between the hours of 8 A.M. and 4 P.M. by persons not covered thereby.

EMPLOYEES' STATEMENT OF FACTS: For many years the Carrier maintained a force in the yards at Cedar Rapids, Iowa consisting of the following positions, all of which were covered by and subject to the rules of the

Clerks' Agreement. Regular relief positions were also maintained, but not identified by number, to furnish relief for the yard clerk positions on the days and to the extent shown in the following chart.

Pos. No.	Title	Rate of Pay as of March, 1952	Relieved On
36	Chief Yard Clerk	\$14.356	Sunday and Monday
37	Yard Clerk	13.3102	Friday and Saturday
38	Yard Clerk	13.3102	Tuesday and Wednesday
40	Yard Clerk	13.3102	Thursday and Friday
43	Yard Clerk	13.3102	Sunday and Monday
46	Yard Clerk	13.096	Saturday

Employee K. H. Freeman is the regular occupant of Chief Yard Clerk Position No. 36; hours of assignment are 8 A.M. to 4 P.M.; present rate of pay is \$18.956 per day.

Employee J. J. Trimble is the regular occupant of Position No. 38; hours of assignment are 11:59 P.M. to 7:59 A.M.; present rate of pay is \$17.9104 per day.

Positions No. 36, No. 38 and No. 43 were commonly known as "inside positions" and this was so because the vast majority of the duties performed on those positions were performed in the yard office; such as:

1. Making up hard list for outbound trains.
2. Making up soft list for outbound trains.
3. Manifesting cars moving on outbound trains.
4. Answering telephone and furnishing information taken from waybills; receiving orders from the freight office and industries.
5. Marking up list of inbound trains.
6. Booking the inbound trains.
7. Marking up the switch list from waybills and written orders from the freight office and telephone orders received from industries.
8. Furnishing consists to dispatcher at Marion.
9. Receiving disposition of foreign cars.
10. Assisting outside clerk with icing of cars and heater inspections.

In addition to the above, it was also the duty of the Chief Yard Clerk to report the list of cars on the Foreign Car Disposition form and to handle the timeslips for the switchmen and enginemen, and make other reports.

The opinions in those awards clearly show that the duties of yardmasters are varied, that essentially this work is supervisory, and that as an incident to these duties yardmasters of necessity perform some clerical work. Likewise in some instances clerks under the direction of yardmasters perform certain work which in other cases may be done by the yardmasters themselves. * * * The border line which marks the division between these two branches of work is so shadowy it is incumbent on those who claim a violation of the agreement to show that the yardmasters have in fact become clerks and that the clerks have been entrusted with such supervisory and responsible duties that they are in fact yardmasters."

We further desire to call attention to Third Division Award No. 7426. The Opinion of the Board in that Award states in part:

"Nor do we consider that the performance of the work by the trainmaster and yardmaster on that occasion constituted a violation of the Clerk's Agreement, in view of our finding that such work has occasionally been done by them in the past."

In addition, we should like to direct attention to Third Division Award No. 8218. The Opinion of the Board in that Award states in part:

"Claimant cites awards holding that, except as permitted by the Agreement, supervisors cannot, on Sundays or holidays, perform clerical work incident to their own positions, if such clerical duties are assigned to Clerks on regular work days. It is argued that some of the awards even mean that the supervisor cannot therefore perform even his own supervisory work on holidays, if on regular work days a Clerk has concurrent authority to perform it, as here. The awards cited have not that effect; so to hold would violate, both the Carrier's prerogatives and the Yard Master's Agreement."

The items of work here in dispute do not accrue exclusively to employees covered by the Clerks' Agreement and there is no schedule rule, practice or understanding which supports the employees position in that regard.

There is no basis for this claim.

There has been no violation of the rules.

The Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In the record Petitioner lists duties which it contends are reserved to Clerks. It alleges that Carrier violated the Agreement by permitting or directing Yardmasters, Switchmen, Roundhouse Foremen and employees of two other railroads to perform the listed duties. In answer, Carrier admits that Clerks had performed the duties; but, that the duties had also been performed by other crafts and classes of employees. With issue thus joined—the Scope Rule of the Agreement being what we have consistently characterized as general—Petitioner, if it is to prevail, must prove that historically, traditionally, usually and customarily the listed duties have been exclusively performed by Clerks on Carrier's system. This is such a well established principle that we see no need for citing the hosts of precedent Awards.

The evidence adduced by Petitioner as to past practice is uncertain. Because of this and conflicts, which we cannot resolve, the evidence is lacking in probative value; and, we are unable to make a finding as to past practice. We will dismiss the claim.

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 claim must be dismissed for lack of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1964.