

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 (GL-5027) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule and Rule 3-C-2, when it abolished two clerical positions of Chalker, Symbol Nos. G-63 and G-70, located on the Hump at Juniata Scales, Eastbound, Altoona, Pennsylvania, Pittsburgh Region, and assigned the work of the abolished positions to Brakemen who were not covered by the Clerical Rules Agreement, effective January 19, 1958.

(b) The Claimant, Clerk R. W. Overcash, should be allowed sixteen hours' pay a day for September 2, 1958, and all subsequent dates until the violation is corrected. (Docket 836)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees 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 Employees 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 part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Claimant R. W. Overcash was the incumbent of a regular clerical position Symbol No. G-89, located at Rose, Altoona Yard, Altoona, Pennsylvania, Pittsburgh Region, from August 7, 1958, until he was displaced from the position on January 17, 1959. He has a seniority date on the seniority roster of the Pittsburgh Region in Group 1. Mr. Overcash was furloughed on February 2, 1959.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take 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.

(Exhibits not reproduced.)

OPINION OF BOARD: Notice of the pendency of this dispute was served on the Brotherhood of Railroad Trainmen in accordance with the requirement of Section 3, First (j) of the Railway Labor Act. The Brotherhood declined to participate herein. The Board, then, will proceed to a consideration of the case on the merits.

There is in evidence here a Joint Statement of Agreed Upon Facts reading as follows:

"JOINT STATEMENT OF AGREED UPON FACTS: Claimant, R. W. Overcash, held position of Clerk, Symbol No. G-89, tour of duty 11:59 P.M. to 7:59 A.M., rest days of Tuesday and Wednesday, at Rose Altoona Yard, Pa., from August 7, 1958 until he was displaced from this position on January 17, 1959. Claimant became a furloughed employe under Rule 3-C-1 (a) and filed his name and address on February 2, 1959 under Rule 3-C-1 (c).

At Juniata Scales, Altoona, Pa., there were two positions of Clerk, normally referred to as 'chalkers' as follows:

Symbol No.	Incumbent	Tour of Duty	Rest Days	Rate
G-63	W. C. Snyder	6:40 AM to 2:40 PM	Thurs. & Fri.	\$412.07 eff. 11-1-57
G-70	O. V. Dayton	2:40 PM to 10:40 PM	Mon. & Tues.	\$412.07 eff. 11-1-57

The primary advertised duties of position G-63 and G-70 were, 'preparation of classification sheets and chalking cars'. Positions G-63 and G-70 were abolished on January 19, 1958. The chalking of cars was discontinued and the preparation of the classification sheets was assigned to clerical positions G-6 on the first trick and G-8 on the second trick at Juniata Scales.

Since the abolishment of clerical positions G-63 and G-70, a trainman marks the cuts of cars on a slate which is located a short distance west of the Scale Office."

From the foregoing facts, it appears this claim is bottomed on the premise that the Scope Rule of the Agreement, and, more particularly, Rule 3-C-2 (a) (1) was violated. Rule 3-C-2 is entitled "Assignment of Work." It stipulates how the remaining work of an abolished clerical position shall be performed and by whom. Its language is clear, precise, unambiguous, and mandatory. It says, inter alia, that the work "previously assigned" to an abolished position which "remains to be performed" will be assigned, under subparagraph (1), to another clerical position or positions remaining in existence "at the location where the work of the abolished position is to be performed. . . ."

The work of the two positions abolished in this case was "preparation of classification sheets and chalking cars." The classification work was assigned to those clerical positions remaining at the location but, says the Carrier, the work of chalking cars by clerks disappeared upon the abolishment of the positions. The employees deny the disappearance of such work and allege it was assigned to others not covered by the Clerks' Agreement, namely, Brakemen and Conductors.

Thus, the dispositive issue then turns on a question of fact. If the work of chalking cars remained to be performed but was done by others not covered by the Agreement, then clearly Rule 3-C-2 (a) (1) was violated. That being the case, the Board finds no necessity for exploring at length the much debated issue of proof of an exclusive right to the work by clerks under what has been characterized as a general, non-specific Scope Rule. There is nothing general or ambiguous in the language of Rule 3-C-2 applied to the facts of record here. The work was assigned by bulletin to the clerks and was performed by them. If it remained to be performed after abolishment of the clerical positions it had to be assigned to the remaining clerks' jobs at the location under Rule 3-C-2 (a) (1). There was no showing in the record that at the time the chalking of cars was being performed by clerks, others not belonging to that craft were performing the same work. Nor is this a case where, as in Board Award 8331 and others, the clerks are claiming, as their own, work which had been performed and was being performed by employees holding no rights under the Clerks' Agreement. The sole question here is whether the work remained to be performed.

The Board is of the opinion that the findings in Award 4448 (Referee Wenke) involving these same parties and a similar issue are in point and persuasive. There it was said, among other things, ". . . the Agreement is applicable to certain character of work and not merely to the method of performing it. . . ." and ". . . the Carrier could not properly remove it therefrom by merely changing the method of its performance. . . ." Here the character of the work was informational, i.e., to inform the trainmen switching cars on the hump of where to make their cuts and the track destinations of the cars. The clerks performed this work by chalking the required information on the cars; the trainmen chalked it on a slate. The character of the work and its purpose were the same. It remained to be done after abolishment of the clerical positions. It was done by other than clerks. The only change was one of method of performance.

Accordingly, the Board finds and holds that Rule 3-C-2 (a) (1) was violated, as alleged. Reparations for breach of the Agreement will be limited

to the period from and after November 17, 1959, when the claim was perfected on the property, to and including March 21, 1960, when the use of the slate was discontinued. The claim will be sustained for payment to Claimant of 8 hours for each day during the aforesaid period.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

AWARD

Claim sustained to extent shown in findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1964.