Award No. 14884
Docket No. CL-15662

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5799) that:

1. Carrier violated the current Agreement between the parties, effective January 15, 1955, when on August 24, 1964 Carrier permitted and required Yard Crews and Yard Foreman to check cars on tracks at the Yellow Cab Outside Yard.

2. Carrier shall now compensate Claimant, Mr. James Hester, for three (3) hours' pay at the overtime rate of his position for August 24 1964 and each subsequent work day thereafter until November 20, 1964, when work of checking cars was returned to Claimant Hester.

3. All other employes who were involved or affected by this violation shall likewise be compensated as provided in Item 2 above.

EMPLOYES' STATEMENT OF FACTS: Carrier employs three (3) yard engines in around-the-clock operations at the General Motors Truck & Coach Plant No. 2, which is known as the Yellow Cab Plant. Adjacent to plant are five (5) tracks, known as Yellow Cab Outside Yard, which hold approximately 200 cars and are usually filled to capacity.

Carrier employs one Yard Clerk (Claimant Hester), hours from 7:00 A. M. to 3:00 P. M. Claimant checks entire yard on what is commonly known as 7:00 A. M. yard check. One copy of this check is retained for Carrier records, one copy is given to Yellow Cab Traffic Department, and one copy is given to the Yard Foreman on 7:00 A. M. Yellow Cab yard engine assignment.

Yard Foreman and Yard Crews are not required to walk tracks and check cars between 7:00 A. M. and 3:00 P. M. because a complete check of

It was your position that yard crews and yard foremen were performing Clerks' work when Carrier permitted and required them to check cars on tracks at the Yellow Cab outside yard in violation of Rule 1(Scope) of the Clerks' Agreement.

Carrier representatives informed you that yard crews and yard foremen were not checking cars nor were they performing clerks' work. If they were writing down car numbers and initials they were not instructed to do so and they were doing so for their own convenience.

After a full discussion of the case Carrier representative confirmed its declination of November 19, 1964.

Yours very truly,

/s/ H. A. Sanders"

As indicated by the foregoing quoted correspondence, it is the contention of the employes that the Carrier improperly removed the work of making an afternoon yard check at the Yellow Cab Outside Yard from under the Scope of the Clerks' Working Agreement and allegedly reassigned such work to employes (Yardmen) in another class of service.

Copies of the Working Agreement, effective January 15, 1955, in effect between this Carrier and the Brotherhood of Railway and Steamship Clerks, are on file with the Third Division.

OPINION OF BOARD: Carrier employed three yard engines in around-the-clock operations at the General Motors Truck and Coach Plant No. 2, which is known as the Yellow Cab Plant. Adjacent to the plant are five tracks, known as Yellow Cab Outside Yard, which hold approximately 200 cars. Claimant was employed at this location as Yard Clerk with regularly assigned hours from 7:00 A. M. to 3:00 P. M. He checked the entire yard for location of cars and this was commonly known as 7:00 A. M. yard check. In addition, prior to the period of the Claim, he was assigned to work three hours overtime to provide a current check of the yard. These checks enabled the Yard Foreman and yard crews to know the exact location of cars (track number and spot).

During the period for which claim for compensation is made Carrier terminated Claimant's overtime assignment. It admits that during this time the Yard Foreman and yard crews were required to check the yard to locate the track number and spot of cars designated on the switching lists. The performance of this work, Petitioner alleges, violated the following provision of the Scope Rule:

> "Positions 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."

Carrier contends: (1) no rule in the Agreement prohibited Carrier from discontinuing the yard check Claimant had performed on overtime; (2) it is the prerogative of Carrier to determine what work is to be performed and the

time of its performance; and (3) no rule in the Agreement requires the Carrier to have performed work it does not need or want performed.

The record makes clear that the work performed by the Yard Foreman and yard crews had the same objective as the work performed by Claimant and was necessary to Carrier's operation. It was, therefore, work within the coverage of the Scope Rule, **supra**, which could not be removed therefrom absent agreement between the parties. See Award Nos. 7129, 7168, 11586, 12414; cf. Award Nos. 8236, 10314. We will sustain paragraphs (1) and (2) of the Claim.

Carrier moves to strike paragraph (3). There is no showing that others were involved or affected; therefore, paragraph (3) of the claim is dismissed.

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 Carrier violated the Agreement.

AWARD

Paragraphs (1) and (2) of the Claim sustained.

Paragraph (3) of the 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 October 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14884, DOCKET CL-15662 (REFEREE DORSEY)

The Majority's conclusion that work was removed is erroneous. The elimination of work does not constitute a removal of work within any prohibition in the Agreement. And further, the Majority's conclusion that that which was done by the yard crews was within the coverage of the Agreement is equally erroneous. The yard crews only performed work which was necessary to the performance of their own duties.

For these and other reasons, we dissent.

/s/ J. R. Mathieu
/s/ C. H. Manoogian
/s/ R. A. DeRossett
/s/ W. M. Roberts
/s/ W. B. Jones

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