



Award No. 15782
Docket No. CL-16001

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

**CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the Agreement at Rockwood, Tennessee, when it required or allowed Trainmaster L. T. Mitchell, not covered by the Agreement, to perform work belonging to and previously performed by employees covered by the Clerks' Agreement.

(b) Mr. B. M. Johnson, Extra Clerk, shall be compensated for eight hours at the proper pro rata rate for Friday, June 26, 1964.

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 seniority and the Southern Railway Company.

Mr. B. M. Johnson is carried on the Southern Railway System, CNO & TP Seniority Roster, Group 1, Clerks, Somerset, Kentucky, with a seniority date of December 14, 1962.

Division Chairman, Mr. T. G. Carson, filed the initial claim in this case on July 5, 1964, Employees' Exhibit A, and stated:

"Claim is hereby filed for and on behalf of Mr. B. M. Johnson, extra clerk, Rockwood, Tennessee for pay for eight (8) hours at pro rata rate for Friday, June 26, 1964, account Trainmaster L. T. Mitchell performing clerical work at Rockwood, Tennessee in that Mr. Mitchell checked a cut of cars twenty (20) in number out of Roane Electric Plant, Rockwood, Tennessee, this cut of cars was then switched by train No. 68 on same date.

This is work that was performed by the clerical employee at Rockwood before the position was abolished.

"RULE 1. SCOPE
(Revised, effective October 1, 1938)

These rules shall govern the hours of service and working conditions of employes described in the following respective groups in general and district offices, and similar employes in offices and operations under jurisdiction of other officers and subordinate officers in the various departments of each of the Carriers named in the caption of this agreement:

Group 1. Clerks —

- (a) Clerical Workers, and
- (b) Machine Operators, all as hereinafter defined in Rule 2.

* * * * *

It is understood and agreed that the hours of service and working conditions of employes embraced in each respective group above are subject to the specifications and exceptions hereinafter contained in various rules of this schedule.

* * * * *

"RULE 7.
EXTRA YARD CLERKS

(a) (Revised, effective September 1, 1949.) Where necessary, extra clerks may be employed on the following basis:

(1) At yard offices, one extra clerk may be allowed to every five regular positions. If employed as above, an extra board will be maintained showing the seniority of extra clerks. Such extra clerks will accumulate seniority to yard office positions only; and when assigned by bulletin to a regular position on seniority district will be allowed their accumulated seniority on the division roster.

In filling temporary vacancies in yard clerical positions, or in protecting extra clerical work at yards, at points where an extra board is established as provided above, extra yard clerks will work first-in, first-out, regardless of their seniority standing. They shall be paid only for days actually worked.

The work week for employes covered by this Rule 7 shall be a period of seven consecutive days starting with Monday. An extra yard clerk cannot claim extra service after working forty (40) hours consisting of five (5) eight (8) hour shifts in any work week starting with Monday if another extra or furloughed clerk who has not worked forty (40) hours in that work week is available.

* * * * *

OPINION OF BOARD: Effective December, 1963, the position of Clerk was abolished at Rockwood, Tennessee due to a substantial reduction in the volume of agency work. The incumbent of that position was given another clerical position at Cincinnati. Subsequent to December, 1963, the remaining

employee at Rockwood, the Station Agent, performed all the necessary agency work.

In June, 1964, Trainmaster Mitchell, an officer of the Carrier, was at Rockwood observing the handling of some rail and crossties, as well as exercising his normal supervisory functions. While at the Roane Electric Company, the Trainmaster copied the numbers of some 20 outbound cars in the industry's yard and later gave this list to the Rockwood Station Agent. Had the Trainmaster not given the Agent this list, the Agent would have copied the initials and numbers as the cars were pulled past the depot. On the claim date, claimant was working a vacation vacancy as yard clerk at Oakdale.

The Organization contends that the Trainmaster, by copying the numbers of a cut of 20 cars and turning them over to the Agent, was in fact performing clerical work, and that this was work performed by the clerical employee at Rockwood before the position was abolished. Petitioner alleges violation of Rule 1 (Scope Rule) and Rule 7 — (Extra Yard Clerks).

There are other issues raised in the record, which for the purposes of this decision, we need not allude to nor consider. The fact is that on the date in question, no clerical position existed at Rockwood and all agency work at that one-man station belonged to the agent. The Scope Rule is general in nature and does not confer an exclusive right to this particular work to the classification of employee such as the claimant. Furthermore, Rule 7 is simply not applicable to this dispute.

The Trainmaster in this case was performing his supervisory functions in copying the car numbers for his own purposes. When he was finished with the list, he gave it to the Agent. This at best, is an isolated instance, and to be sure, if this was a routine to be performed on a regular, systematic basis, petitioner might have more substance to his claim, but confronted with the factual situation as evidenced by the record, we will deny the claim for lack of proof.

FINDINGS: The Third Division of the Adjustment Board, 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 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 28th day of July 1967.

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