



Award Number 17836

Docket Number CL-18301

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GI-6601) that:

1. Carrier violated the Clerks' Agreement when, on October 2 and 4, 1967, the Carrier removed the clerical work of checking cars and adding car initials and numbers to switch list on cars to be set in industries, from the scope and operation of the Clerks' Agreement and required Switchman R. G. Browne, an employe of another craft and class of service to perform the clerical work here involved, in violation of Rules 1, 2, 3, 5, 8, 25 and related rules of the Clerks' Agreement.
2. The Carrier shall be required to compensate Mr. C. L. Wilson, Industry Clerk, located on the St. Louis Terminal, St. Louis, Missouri, for eight hours at punitive rate, amount \$35.51, for each date, October 2 and 4, 1968, total claim \$71.02.

EMPLOYES' STATEMENT OF FACTS: This claim and dispute arose on the Carrier's St. Louis Terminal Station and Yards seniority district, located at St. Louis, Missouri.

The 23rd Street clerical force of Yard Clerks on the St. Louis Terminal is reflected in the following statement, beginning with the Mediation Wage Agreement of November 1, 1928. There were Yard clerical forces at the 23rd Street location for many years prior to November 1, 1928, but wage rate sheets for those years are not available to the Employees at this time.

The duties of the Industry Clerk positions listed herein were outlined on Carrier's St. Louis Terminal Bulletin No. 49, dated August 24, 1967, as follows:

"Check yards, card and weigh cars, keep seal records. Order cars and make report of cars loaded and unloaded by industries. Sign bills of lading and handle demurrage. Perform such other similar or lower rated duties as may be assigned properly coming within the rate of pay."

8. The dispute was not composed and Carrier is in receipt of the Organization's notice of intent to file the claim with your Board.

(Exhibits Not Reproduced)

OPINION OF BOARD: The Scope Rule neither defines nor describes the work of an Industry Clerk or any other clerical position. Under these circumstances it is necessary to determine whether by history, custom and practice that work is reserved exclusively to employees under the Clerks' Agreement.

A time claim was filed on November 20, 1967. At that time the Employees' Division Chairman wrote to Carrier's Agent that: "This work of making out switch lists and adding cars to switch lists has always been exclusive clerical work and our yard clerks and industry clerks have always performed this work." In reply thereto on December 21, 1967, the Agent wrote: "This is work that is continually done by switchmen, brakemen and conductors to add cars not checked on their train lists or industry lists so that the proper work can be done."

The respective position of each party was maintained throughout the handling of the claim on the property and the appeals procedures. On March 25, 1968, the General Chairman wrote, in part, as follows:

"We understand that Switchman R. G. Browne, on October 2, 1967, before starting the switching of cars in Track No. 18, was furnished by the Yardmaster a teletype copy of list of cars in track No. 18, and as he switched the cars he marked the list to show where the cars were set and those cars that were not set were identified on the list as to their location; also, Switchman Browne added car initials and numbers to the switch list of cars that apparently had been picked up at other locations in the yard. Such lists were then turned in at the Yardmaster's office and the Clerk there called the Seventh Street office and gave the car numbers and initials to the Terminal Car Control Clerk who then lined up the IBM cards for such cars in the proper order.

"We hold it was rank violation of the Clerks' Agreement for Carrier to permit or require Switchmen to perform this clerical work. It has never been work incidental to a switchman's duties and it was never done until the Carrier's installation of the new Terminal Car Control System."

To this letter the Superintendent replied on April 24, 1968, in part, as follows:

"Investigation develops that on the dates in question, switch foreman Browne kept record of cars being handled by his crew—which work is that customarily and regularly performed by switch foremen in performance of their assigned duties."

And on further appeal, Carrier's Director of Labor Relations wrote:

"The Switch Foreman is charged with the responsibility of switching the respective industries. For years Conductors, Switch Foremen, Switchmen and Brakemen have prepared switch lists showing where the cars were to be placed, and kept record of cars handled. The Switch Foreman may perform work which is incidental to his duties, and when so doing he is not taking the place of

another employe but is merely carrying out the responsibilities of his position."

It is abundantly clear from the handling of the claim on the property that the Employes did not establish by a preponderance of probative evidence that this work belongs exclusively to employes covered by the Clerks' Agreement. But, say the Employes in their Rebuttal Brief, "Prior to the new Terminal Car Control System being instituted, the Engine Foreman never made any record of cars being placed at industries. The Switchmen switched the cars according to switch lists furnished him which was prepared by the clerical force, and Yard Clerks, Industry Clerks or Demurrage Clerks ground checked the tracks at the industries to which cars were switched and made the record of the cars."

Aside from the fact that Employes last statement is a mere assertion and not evidence, the substantive issue here presented was adjudicated in Award No. 5 of Special Board of Adjustment No. 166 involving the same parties and the same schedule agreement. While the facts in that case are not identical with those here, the award did hold that requiring a conductor to correct the list of his train was not a violation of the Clerks' Agreement. That Board reached its conclusion on the fact that this was not exclusively work of clerks.

It is evident from all of the competent evidence in the record that the work performed by the Switch Foreman was incidental to his duties. He did not perform work which belongs exclusively to employes covered by the Clerks' Agreement.

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 did not violate the Agreement.

Claim denied.

A W A R D

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division
ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1970.