



Award No. 18804
Docket No. CL-18976

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6847) that:

(1) Carrier violated the Clerks' Agreement when its arbitrarily and unilaterally removed clerical work from the scope of such Agreement and failed to assign such clerical work within the scope of such agreement at Moorefield and State Street Yards, Indianapolis, Indiana, and did assign such work to employees not under the scope of the Clerks' Agreement, and

(2) That M. F. Stanich shall now be paid for one additional day on October 21, 1968 at the prevailing rate of pay for Yard Clerks at Moorefield Yard, Indianapolis, Indiana, hours 7 A. M. to 3 P. M., and for one day on each subsequent date at such rate of pay, seven (7) days per week, until all of the work properly falling within the scope of the Clerks' Agreement is properly assigned and/or reassigned to positions under the scope of such Agreement, and

(3) That C. F. Harlan shall now be paid for one additional day on October 21, 1968 at the prevailing rate of pay for Yard Clerks at Moorefield Yard, Indianapolis, Indiana, hours 11 P. M. to 7 A. M., and for one day on each subsequent date at such rate of pay, seven (7) days per week, until all of the work properly falling within the scope of the Clerks' Agreement is properly assigned and/or reassigned to positions under the scope of such Agreement, and

(4) That L. H. Tackett shall now be paid for one additional day on October 21, 1968 at the prevailing rate of pay for Yard Clerks at Moorefield Yard, Indianapolis, Indiana, hours 3 P. M. to 11 P. M., and for one day on each subsequent date at such rate of pay, seven (7) days per week, until all of the work properly falling within the scope of the Clerks' Agreement is properly assigned and/or reassigned to positions under the scope of such Agreement, and

(5) That D. J. Bates shall now be paid for one additional day on October 21, 1968 at the prevailing rate of pay for Yard Clerks at

State Street Yard, Indianapolis, Indiana, hours 3:45 P. M. to 11:45 P. M., and one day for each subsequent date at such rate, six (6) days per week, Monday through Saturday each week, until all of the work properly falling within the scope of the Clerks' Agreement is properly assigned and/or reassigned to positions under the scope of such Agreement.

EMPLOYES' STATEMENT OF FACTS: Starting during the calendar year 1955 and continuing thereafter, the Carrier removed clerical work from positions covered by the Clerks' Agreement progressively, and in increasing volume, and required and/or permitted employees not covered by such Agreement to perform the work. By reason of these actions, persons (Yardmasters) not holding positions under the scope and provisions of the Clerks' Agreement are performing the following duties which properly fall within the scope of the Clerks' Agreement:

1. Yardmasters prepare a report of daily train performance showing:—

Train name (or number)	Empty cars
Engine number	Tonnage inbound
Arrival time	Tonnage outbound
Departure time	Reasons for delay, if any
Loaded cars	

These reports are filed with the Telegraph Operators for transmission to the office of the Division Superintendent and a copy retained in the files. A comparable form numbered 2632 is prepared by the Yard Clerks. Form #2632 encompasses all of the information contained in the performance report made by the Yardmasters.

2. Yardmasters prepare a report of performance covering the arrival and handling of the cut of cars commonly known as the Midwestern rearend set-off. This report shows the following information:—

- (a) Train designation
- (b) Time of train arrival
- (c) Sequence of car standing in set-off
- (d) Classification, including local industrial and delivery track destinations
- (e) Time each car is spotted on patron's track of public siding

Upon completion, these reports are forwarded to the office of the Agent for his use in connection with demurrage records and computations. The information in items a, b, c, and d are copied by the Yardmaster from the original train list prepared by the clerk. A clerk also prepares a list for the use of yard crew foremen indicating where each car is to be placed and, after all placements have been made, this list is returned to the clerk with the time of placement shown thereon by the yard crew foremen. The clerk then advises the Yardmaster of the time each car was spotted. The Yardmaster then completes the report as indicated above as item (e). The reports are then forwarded to the office of the Agent for the use of the Demurrage Clerk in connection with demurrage records and the computation of charges.

The contentions outlined in Items (4) and (5) appear to be identical. As you admit, actual track checks were made by yard clerks. The yardmaster then used these track checks for the purpose of formulating his instructions to the yard crews.

As you stated in your appeal letter, the work outlined in Items (1) and (2) was discontinued. Furthermore, you indicated that these alleged violations began in 1955. My investigation discloses that yardmasters had been performing this work many, many years prior to 1955. As I stated previously, I cannot agree that the duties which have been performed by yardmasters at Moorefield Yard constituted any infringement upon the rights of clerical employees at that location. I, therefore, see no merit to this claim and accordingly, it is declined."

/s/ W. A. Harris

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The Carrier's terminal at Indianapolis, Indiana, is comprised of two yards, namely, Moorefield Yard and State Street Yard. At the time this claim arose, October 21, 1968, a yardmaster was assigned to each of three tricks at Moorefield Yard, seven days per week. The first and third trick yardmasters at Moorefield Yard, also had jurisdiction over State Street Yard. At State Street Yard a second trick yardmaster was assigned six days per week, Monday through Saturday.

The claims here are based on a contention that these yardmasters performed work properly belonging to clerks. The claimants held regular assignments at Moorefield and State Street although the hours specified in the Statement of Claims represent periods of time outside their regular tours of duty. There were other clerical employees regularly assigned at Moorefield and State Street during those periods of time, however.

OPINION OF BOARD: The claim in the instant case is based on the alleged removal by the Carrier of clerical work from the scope of the Agreement and failure to assign such clerical work to employees covered by the Agreement. The appeal letter of the Organization to the Labor Relations Department of the Carrier dated March 14, 1969 effectively sets out the work which is the subject matter of the claim and the Carriers actions which are alleged to be in violation of the Agreement:

"(1) Employees not covered by the Clerks' Agreement (Yardmasters) prepare an unnumbered and unnamed company form on which they enter train name, engine number, arrival and departure times, consist of train and reason for delay, if any, and such information covers a 24-hour period. This form is filed with the Operator at Indianapolis and is transmitted to the Office of the Superintendent. Similar work is also introduced onto form #2632 which is prepared on the daily basis by clerical employees.

(2) Yardmasters also prepare a performance report for the 'Mid-Westerner' daily showing standing of each car in the train, classification or local destination of each car, time of train arrival and time each car is placed. This form is furnished to various division offices and the local demurrage clerk as a report of record.

(3) Each day at 10 P. M., the Yardmaster obtains information available on track lists showing cars on hand ready for movement to the I.U. Belt Railroad which cannot be placed on the Belt interchange track because of lack of space. This information is furnished the Belt Railroad dispatcher by telephone as to volume and in detail to the extent that he may request. This information becomes a part of the composite weekly 'Belt report' and shows:—

- (a) Time Belt cut made up ready for delivery
- (b) Number of cars in Belt cut
- (c) Current date
- (d) Time the report is made and name of Belt dispatcher to whom reported
- (e) Time Belt cut was delivered and designations of interchange track to which delivered
- (f) Time and date belt cut was pulled from Belt interchange track
- (g) Identification of Belt cut pulled by direction (East-bound or Westbound)

(4) At the beginning of each shift, the Yardmaster assembles all of the applicable single-copy lists which have been prepared by the Yard Clerks and copies them, making multiple-lists for use of Yard Foreman.

(5) Upon receipt of consists of incoming trains, single-copy switch lists are prepared by the Yard Clerks. These lists are given to the Yardmasters who copy them, making multiple-copy switch lists for use of the Yard Foreman."

* * * * *

"Formerly, employes covered by our Agreement (Yard Clerks) checked all of the incoming trains and chalk-marked on the side of each car the classification and date. Yard Foremen observed these markings for the purpose of switching trains and/or cuts of cars. The chalk marking was discontinued and the Yard Foremen are now given a list of the cars in each train or track in lieu of such markings. This list is prepared, in multiple, by Yardmasters who copy the single-copy switch list that has been prepared by the Yard Clerks showing all pertinent information including car identification in track standing and classification. This preparation by the Yardmasters is a transcript and is clerical work as defined in the Clerks' Agreement (Rule 1a) and is the violation cited in paragraphs (4) and (5) above."

The Carrier defended as to part (1) on the basis that the form was unnamed and unnumbered and utilized by the yardmaster to record train arrival and departure times which he used to advise as to reasons for delays. In fact the form was maintained through 3 shifts on a 24 hour basis. The fact that it was unnamed and unnumbered is not by any means controlling. The char-

acter of the work is clerical and properly belonged to employees covered by the Agreement.

The work which is the subject of part (2) is also clerical in nature and the Carrier's defense as to why the work was performed does not justify its being assigned to employees not covered by the Agreement.

As to part (3) the Carrier joined issue as to exactly what work was performed. The Organization on this point failed to meet the burden of proof that there was work performed by the yardmaster which was clerical in nature.

Parts 4 and 5 involve the question of whether the admitted clerical work performed by the yardmaster is incidental to his duties and therefore excluded from the coverage of the rules of the Agreement. The yardmaster takes the written single copies of yard checks prepared by clerks and transcribes them onto a form on which he writes his instructions as to the switching of cars. This form is then delivered to the yard crew. The graveman of the complaint is the function of preparing the compilation from the single copy lists prepared by Yard Clerks. The Carrier argues that this function is incidental to the supervisory duties of yardmaster in that it is part of his written instructions to the yard crew. Can the preparation of the multi-copy list from those prepared by clerks be separated from the function of issuing instructions to the yard crews? We think so. The compilation of lists such as the one used by the yardmaster is clerical in nature and properly work belonging to employees covered by the Agreement.

A problem arises in this case as to the proper damages to be assessed. Those asked for in the claim itself are clearly excessive. We will award one hour's pay at the rate of a yard clerk at Moorefield Yard for each day the violations exist. This amount shall be divided among the Claimants.

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 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 violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1971.

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