

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19321
Docket Number CL-18157

Gene T. Ritter, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6567)
that:

(1) Carrier violated the current Clerks' Agreement when on or about October 26, 1965 it arbitrarily removed work from, and did not assign work to a position, or positions, covered by the scope of said Agreement at Hancock, W. Va., and refused to return and assign such work to a position, or positions, under the scope of said Agreement, and

(2) G. D. Long, Hancock, W. Va., shall now be paid for one (1) day each date on February 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26 and 28, 1966 and for each subsequent date of record, at pro rata rate of \$21.59 per day (plus wage adjustments made subsequent to the aforesaid dates) until all of the involved work is properly assigned, reassigned and/or restored to a position, or positions, under the scope of the Clerks' Agreement.

(Note:-Claims for subsequent dates of record are held in abeyance on behalf of either the named claimant, or one who has properly stood in his stead by agreement between the Carrier's Superintendent and the Organization's Division Chairman at Cumberland, Maryland.)

OPINION OF BOARD: The Organization in this dispute contends that effective October 26, 1965, in compliance with the instruction of the Agent, the Conductor commenced making a physical check of cars which included furnishing information of how cars are lined up, how many cars leave the tower; and furnishing information on how many loads and empties leave the Sand Company facilities in Berkley Springs, West Virginia, 3.9 miles from the Hancock, West Virginia Yard - all within the switching limits served by the Hancock Agency on a branch line leaving from the main line at Hancock, West Virginia. The Organization further alleges that the Operator makes a comparison of the way bills left with him by the Clerk with the physical track check by the Conductor, and lines them in sequence as shown on the track check given to him by the Conductor for delivery to Conductors in charge of the main line trains picking up the cars in West bound movement. The Organization further alleges that in addition to the removal of the morning physical yard check from the Yard Clerk position, the

Pennsylvania Glass Sand Company Demurrage check was also removed from Clerical position assigned to the Agent. Carrier defends this action by alleging that the Scope Rule of the Clerks' Agreement does not confer to Clerical Employees the exclusive right to the listing of cars left and picked up at industries and, further, that on this property, work of this nature had been traditionally and customarily performed by Conductors as incidental to their primary duties. Carrier further contends that under the provisions of the Scope Rule, at a point where no Clerks are stationed, such as the Pennsylvania Glass Sand Company plant, Clerical work may be assigned to an Employee not classified as a Clerk so long as the total time devoted to such work does not exceed 4 hours within a 10 hour spread.

Although this case has some similar aspects to the facts contained in Award 19320, this case is distinguished for two reasons. In the instant case, no Clerks were assigned to work on the second or third trick at Hancock where the Conductor performs the complained of work and no Clerks have ever checked cars at the Pennsylvania Glass Sand Plant, nor have they ever been stationed there.

The Scope Rule in this instance does not give Clerks the exclusive right to perform the involved work. Also, under the provisions of the involved Scope Rule, at a point where no Clerks are stationed, such as this location, clerical work may be assigned to an employee not classified as a Clerk so long as the total time devoted to such work does not exceed four (4) hours within a ten (10) hour spread. The record in this case discloses that the Clerical work performed by the Conductor consumed much less than four (4) hours and it has never been the duty of the Clerks on this property to check the tracks at the Pennsylvania Glass Sand Plant. No Clerks have ever been assigned at this point.

For the foregoing reasons, this claim will be denied.

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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1972.