

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19826
Docket Number Ci-19965

Frederick R. Blackwell, Referee

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

PARTIES TO DISPUTE: (

(St, Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7184)
that:

(1) Carrier violated the Agreement between the parties effective January 1, 1946, as revised and amended, when on March 14, 1971, work which had heretofore been exclusively assigned to the clerical craft and class was performed by an **employee** outside the Scope of the Clerks' Agreement, specifically a trainmaster.

(2) Clerk **D. Miller** now be allowed eight hours at the punitive rate of pay of Position No. 18 in the St. Louis Terminal for March 14, 1971 as a result of the violation of the Agreement by Carrier and further that when required, such duties of physically checking trains and correction of Carrier records, which have been removed from the Agreement, **now** promptly be restored to **employees** of the Clerical craft and class.

OPINION OF BOARD: The claim is that the Scope Rule was violated in that, on March 14, 1971, a **Trainmaster** made an "outbound physical check of Train No. 9043" at Lindenwood Yard in the Carrier's St. Louis Freight Terminal.

In opposing the claim, the Carrier asserted that, on the claim date, the yard check was made by clerical employees in the usual manner and that clerical **employees** also prepared a switch list and a train consist report for Train No. 9043. Thus, the Carrier expressly denied that the Trainmaster made a physical check of the train.

The Petitioner offered no positive evidence that a physical check was made by the **Trainmaster**, and instead, chose to rely on circumstantial evidence. The Petitioner asserted that the Trainmaster made corrections to the consist of Train No. 9043; based on this assertion the Petitioner further asserts that "the Trainmaster would have first been required to make a physical check of Train No. 9043 in order to detect the error." This quoted assertion is based upon an inference which we find not acceptable. First, that the Trainmaster did in fact make corrections in the consist is not clearly established of record. Furthermore, even if it were, this circumstance would be insufficient to show, inferentially, that the **Trainmaster** made a physical check of the train. The yard check system at Lindenwood is largely mechanized and enables an IBM card to record the location of each car in the yard and to follow each car's movement from one track to another. Thus, from the fact that a train consist was corrected one could infer that the correction resulted from information coming from office records, or

one could infer that the correction resulted from information coming from a physical check of the train. But the record before us does not show any reason to favor one of these inferences over the other. Consequently, on the whole record, we conclude that Petitioner has not produced sufficient evidence to show that the **Trainmaster** made a physical check of Train No. 9043 on the date in question. We shall **dismiss** the claim.

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 Claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1973.