

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23273 "
Docket Number CL-22801

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of **Railway**, Airline and Steamship Clerks,
(Freight **Handlers, Express** and station **Employees**
(Soo Lint Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8762) that:

(1) **Carrier** violated the effective Agreement, **specifically** Rules 1, 2, 6(a) and 49, when **Carrier** required and/or **permitted employees** not of our **Craft and Class** to perform **Yard Clerk** duties in the Columbia Heights Industry Area; **employees** not under the Scope of the effective Agreement.

(2) The following Claimants shall **be compensated** on each of the specified dates for **8 hours** at the rate of **time** and one-half at the **Rover Clerk** rate:

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| J. Klompke: | December 8 and 22, 1977; January 5, 1978. |
| T. Flannery: | December 9 and 30, 1977; January 6, 1978. |
| M. Mathison: | December 12, 1977; January 9, 1978. |
| R. Lee: | December 13 and 27, 1977. |
| L. Boog: | December 14 and 28, 1977. |
| W. Boaser: | December 15 and 29, 1977. |
| R. Erickson: | December 16, 1977. |
| R. Green: | December 19, 1977; January 2 and 10, 1978. |
| L. Staeden: | December 20, 1977; January 3, 1978. |
| R. Gagne: | December 21, 1977; January 4, 1978. |
| D. Mohs: | December 23, 1977-r. |

OPINION OF BOARD: The claim arose as a result of the **Carrier's** abolishment of a yard clerk position on **September 23, 1977**. The **abolished** position was the Camden Industry Clerk. Prior to this action, the **Carrier** had **utilized this** position and one other **clerical** position to **make** physical **yard** checks of the **Minneapolis** Industry Yards, and the **Columbia Heights** Industry Yards. After the **Carrier** abolished the **Camden** Industry **Yard Clerk** position, It elected to continue to conduct physical **yard** checks of the **Minneapolis** Industry Yards and the **Camden** Industry Yards, **leaving** the **Columbia Heights** Industry Yards unchecked.

On December 7, 1977, the Carrier Issued Instructions to **Switch Foremen** requiring them to complete a **5001 Form**. **Form 5001** indicates car numbers, cars pulled, cars set, **time** pulled and set and reset. **A claim** was filed by the **Organization** on January 11, 1978, alleging that the **Carrier** had required **employees** not of the clerical craft or **class** to perform yard clerk duties in the **Columbia Heights Industry Yard**.

The essence of this dispute is a conflict between the **Carrier's** attempt to run a more efficient operation and the **Organization's** interest in maintaining employment for its members and preserving the sanctity of the work assigned to those members under applicable agreement provisions. The agreements and the past practices of the parties regarding clerical and switch crew work jurisdictions provide the framework for resolving this dispute. The resolution will depend, in part, upon the appropriate characterization of the duties under consideration. If said duties are characterized as duties which historically and by agreement have been performed by yard clerks, then the claim should be sustained. If, on the other hand, these duties are characterized as being "incidental" to the work of switch foremen, then the claim should be denied.

The **Carrier** contended that switch foremen have, over the years, been required to report information similar to that reflected on **Form 5001**, and that such reporting requirements were merely assignments of incidental work. The **Carrier** also contended that road conductors have been required to fill out and submit **Form 5001** and that switch foremen and road conductors are "one and the same" as demonstrated by the **Consolidated Code of Operating Rules**.

As to the latter contention, although this board recognizes that both switch foremen and road conductors may be subject to the same set of operating rules, they are clearly not the same category of employee. They are certainly distinguished by their different duties and responsibilities in the handling of cars and/or trains, and, in fact, their separate work jurisdictions are preserved by agreement or practice. A switch foreman performs various switching assignments within yard limits of his assigned terminal, while a road conductor ordinarily handles a train over the road from one terminal to another performing switching, as required and permitted, at intermediate points between terminals, which switching is duly recorded on the **Form 5001**. **Form 5001** has been used by road conductors to show cars set out at stations between terminals. This is not the use of the **Form** which the **Carrier** has required of its switch foremen at the **Columbia Heights Yard**. At **Columbia Heights**, the switch foremen use **Form 5001** for more than the purpose of recording the work that they performed in accordance with their assignments; they use the form to list cars remaining on the tracks at the conclusion of the switch assignments, they identify the cars as loads or empties, and they designate the cars for future switching disposition. This reporting is equivalent to the yard check previously conducted

by the Camden Industry Clerk until that position was abolished. There has been no showing that the work assigned to switch foremen, shortly after the abolishment of the yard clerk position, was work historically performed as incidental and necessary to the regularly assigned duties of switch foremen. _

Therefore, the Carrier's contention that the duties are incidental to switch foreman duties is found to be without merit. Prior to September 23, 1977, clerks had, for approximately fifty years, performed the duties now being performed by switch foremen. The Carrier's abolishment of the yard clerk position did not make those duties incidental to the switch foremen's regularly assigned duties.

Therefore it is found that the Carrier has violated the parties' agreement and a remedy commensurate with the violations should be fashioned. If the work performed on an ad hoc basis amounts to a call or less under the applicable provisions of the collective bargaining agreement such remedy would appear to be appropriate in the circumstances of this case.

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;

and the Employees involved in this dispute are

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Serial No. 319

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

INTERPRETATION NO. 1 to **AWARD NO. 23273**

DOCKET NO. CD-22801

NAMES OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship
Clerks, Freight **Handlers**, Express and Station **Employees**

NAME OF CARRIER: **Soo** Line Railroad Company

Upon application of the **Employees** involved in the above Award that this **Division** interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

It is well established that the purpose of an interpretation is to explain and/or clarify the **Award as** originally made and not to **make** a new Award.

The original Award, upon which an interpretation is sought, clearly specified individual Claimants who were to be paid as a result of the Carrier's violations.

The claims were limited to specific dates in December of 1977 and January 1978. Neither the claim nor the Award addressed the issue of continuing liability, and this Interpretation will not expand the Award now to cover unnamed Claimants on **unknown** dates.

Referee Richard R. **Kasher**, who sat with the Division as the Neutral **Member** when Award No. 23273 was adopted, also participated with the Division in making this interpretation.

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

Attest:


Nancy J. Dever - Executive Secretary

Dated at **Chicago**, Illinois this 15th day of December 1983.