

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(CSX Transportation, Inc.  
(Former Baltimore & Ohio Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10422) that:

(1) In accordance with the provisions of the current Clerks' Agreement herewith claim of the Protective Committee, Brotherhood of Railway, Airline & Steamship Clerks. This claim is being filed on behalf of Mr. R. S. Clites, employe number 1401095, Clerk-Operator, Virginia Lane, Cumberland, Maryland and others named herein.

(2) It is respectfully requested that the Carrier now allow regularly assigned Clerk-Operator Mr. R. S. Clites one (1) day, eight (8) hours, at the pro-rata rate of \$99.70 per day, rate of the Claimant's regularly assigned position of Clerk-Operator, Virginia Lane, Cumberland, Maryland, 7:00 AM to 3:00 PM for dates of June 28, 29 and 30, 1986, July 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 31, 1986, August 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1986 and each subsequent date, Thursday through Monday of each week until such time as this claim is resolved, the involved work returned to the clerical craft and this position is reestablished.

(3) It is respectfully requested that the Carrier now allow regularly assigned Clerk-Operator Mr. R. J. Kelley one (1) day, eight (8) hours, at the pro-rata rate of \$100.05 per day, rate of the Claimant's regularly assigned position of Clerk-Operator, Virginia Lane, Cumberland, Maryland, 3:00 PM to 11:00 PM for dates of June 28, 29 and 30, 1986, July 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1986, August 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17 and 18, 1986 and each subsequent date, Saturday through Wednesday of each week until such time as this claim is resolved, the involved work returned to the clerical craft and this position is reestablished.

(4) It is respectfully requested that the Carrier now allow regularly assigned Clerk-Operator Mr. G. E. Speis, Jr. one (1) day, eight (8) hours, at the pro-rata rate of \$100.05 per day, rate of the Claimant's regularly assigned position of Clerk-Operator, Virginia Lane, Cumberland, Maryland, 11:00 PM to 7:00 AM for dates of June 30, 1986, July 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30 and 31, 1986, August 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18 and 19, 1986 and each subsequent date, Monday through Friday of each week until such time as this claim is resolved, the involved work returned to the clerical craft and this position is reestablished.

(5) It is respectfully requested that the Carrier now allow regularly assigned relief Clerk-Operator Mr. R. S. Dawson one (1) day, eight (8) hours, at the pro-rata rate of the position assigned to work, \$99.70 for 7:00 AM to 3:00 PM positions, \$100.05 for 3:00 PM to 11:00 PM positions, and \$100.39 for 11:00 PM to 7:00 AM positions for dates of June 28 and 29, 1986, July 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30 and 31, 1986, August 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16 and 17, 1986 and each subsequent date, Wednesday through Sunday of each week until such time as this claim is resolved, the involved work returned to the clerical craft and this position is reestablished.

(6) It is respectfully requested that the Carrier now allow regularly assigned relief Clerk-Operator Mr. R. L. Powers one (1) day, eight (8) hours, at the pro-rata rate of \$99.70 per day, rate of the Claimant's regularly assigned position on Tuesdays of each week, 7:00 AM to 3:00 PM for dates of July 2, 9, 16, 23, and 30, 1986, August 6 and 13, 1986 and each subsequent Wednesday of each week until such time as this claim is resolved, the involved work returned to the clerical craft and this position reestablished."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The United Transportation Union, as a Third Party in Interest, was notified of the pendency of this dispute and filed a submission with the Board in its behalf.

Effective June 25 and 27, 1986, the Carrier abolished Claimants' Switchtender positions at Virginia Lane, Cumberland, Maryland. These positions had been under the coverage of the Agreement between the Carrier and the Organization herein and had as their primary responsibility the handling of some nineteen (19) switches leading into Cumberland Yard. Subsequent to the abolishments, the switches were handled by the train crews entering and departing the yard. Such crews are employed under an Agreement between the Carrier and the United Transportation Union (UTU).

The Organization asserts the work involved was improperly removed from the clerical craft. It relies upon Rule 1 of the Agreement, which reads in part, as follows:

"Positions and Employees Affected

- (a) These rules shall constitute an agreement between the Baltimore and Ohio Railroad Company, the Western Maryland Railway Company, and the Staten Island Railroad Corporation and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and shall govern the hours of service, working conditions, and rates of pay of all clerical, office, station, storehouse employees and transportation-communication employees, which shall include all employees covered by Agreement effective June 4, 1973, as amended.

Clerical Workers

Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work, and to the operation of office mechanical equipment and devices in connection with such duties and work shall be designated as Clerks.

The following employees and/or positions are also covered by this agreement:

Operators handling switches

and any other positions of the crafts and classes not listed above.

Assignment of Work

- (b) When the assignment of clerical work in an office, station, warehouse, freight house, store house, or yard occurring within a spread of ten (10) hours from the time such clerical work begins, is made to more than one (1) employee not classified as a clerk, the total time devoted to such work by all such employees at a facility specified herein shall not exceed four (4) hours per day.

- (c) When a position covered by this agreement is abolished, the work assigned to same which remains to be performed will be reassigned in accordance with the following:
- (1) To position or positions covered by this agreement when such position or positions remain in existence at the location where the work of the abolished position is to be performed.
  - (2) In the event no position under this agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by a Yardmaster, Foreman, or other supervisory employee, provided that less than four (4) hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of a Yardmaster, Foreman, or other supervisory employee.
  - (3) Where the remaining work of an abolished position is reassigned to positions coming within this agreement, an effort will be made, where practicable, to reassign the work to a position or positions assigned similar work, higher rated work to higher rated positions and lower rated work to lower rated positions.
  - (4) Work incident to and directly attached to the primary duties or another class or craft such as preparation of time cards, rendering statements or reports in connection with performance of duty, tickets collected, cars carried in trains, and cars inspected or duties of a similar character, may be performed by employees of such other craft or class."

The Organization argues the work of throwing switches, once the jobs were abolished, should have been assigned to the clerical positions which remained in existence at the location where the work is performed, in accordance with Rule 1(c)(1). Those positions, the Organization asserts, are located in the Terminal Services Center, 115 yards from the Yard "A" Shanty and 140 yards from the closest switch.

The Carrier first denies the Terminal Services Center is the same location as Virginia Lane. It refers to Rule 1(b), and asserts each of the entities listed (i.e., office, station, warehouse, freight house, storehouse or yard) is to be considered a distinct location for the purposes of the Rule. The Carrier notes it took this position at least as early as 1954 without challenge by the Organization. Furthermore, the Carrier disagrees with the Organization's statement regarding the distance to the Terminal Services Center. According to the Carrier, it is in excess of 1100 feet from Virginia Lane.

The Carrier additionally argues Rule 1(c)(4) permits it to assign the work to train crews because such duties are incidental to and directly attached to the primary duties of train service employees. In this respect the Carrier is supported by the UTU, which refers to a March 1, 1955, Agreement between the Brotherhood of Railroad Trainmen (predecessor of the UTU) and the Order of Railroad Telegraphers (a predecessor of the TCU), which gave the Brotherhood of Railroad Trainmen jurisdiction over "positions requiring the handling of switches on the ground by hand or, non-interlocked switches." Under this Agreement, according to the UTU, telegraphers had the right to throw switches if such work was incidental to their train order duties.

The Carrier and the UTU also refer to Award No. 6 of Public Law Board No. 4833 dated February 7, 1991. That dispute involved a claim filed on behalf of a yardman when the Carrier abolished operator positions at Virginia Lane on September 1, 1985. The incumbents of those positions, in addition to handling train orders, threw the switches which are the subject of the instant dispute. Following that abolishment, the Carrier established the Switchtender positions previously held by the Claimants, although they did not have operator duties as part of the job. In sustaining the UTU's claim, Public Law Board No. 4833 held:

"The elimination of train orders and establishment of Switchtender positions manned by clerical employees whose primary if not sole duties consisted of handling switches at and west of Virginia Avenue constituted an encroachment on the contractual rights of yardmen to man the switchtender positions."

The Organization was given notice of the dispute before Public Law Board No. 4833 and was afforded an opportunity to submit a written brief and/or be heard before the Board as an interested third party. The Organization did not file a brief nor did it appear before the Board. The Carrier, citing the Supreme Court's decision in Whitehouse v. Illinois Central Railroad Company, 349 U.S. 366, insists the decision of the Public Law Board is binding upon the Organization.

The application of Rule 1(c)(4) was first considered by Special Board of Adjustment No. 192 in its Decision in Docket No. 91. That Board held work of abolished clerical positions must be assigned to other positions under the Agreement if they exist at the location even if the work of the abolished position is incidental to and directly attached to the primary duties of another craft or class. The Third Division followed that decision in Award 19320 also involving these parties. In that case, this Board found Rule 1(c)(4) to be interdependent with 1(c)(1), (2), and (3). We find those Awards to be erroneous.

Paragraph (1) of the Rule dictates the assignment of work when positions under the Agreement exist at the location. Paragraph (2) covers situations where such positions do not exist and permits the removal of work to other crafts or classes under limited circumstances. Paragraph (3) controls which clerical positions will perform the work when it is reassigned to positions under the scope of the Agreement. If the parties intended to limit the application of Paragraph (4) to situations where no positions exist at the location, they would have evidenced that intent by inserting that condition as they did in Paragraph (2) or, in the alternative, by making the provision a part of Paragraph (2). Instead, Paragraph (4) contains no limitation as to when it is applicable. It must, therefore, be interpreted to apply without regard to whether or not positions exist at the location.

Because the operation of hand-thrown switches, when not in connection with operator duties, is work incidental to and directly attached to the primary duties of train service employees, we find Rule 1(c)(4) to be applicable in this case. The Agreement, therefore, was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1991.