

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

William H. Spencer, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: "Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

"(1) The Carrier violated and continues to violate the rules of the Clerks' Agreement by failing and refusing to classify and rate the duties being performed on the first and second shift in the so-called Tube Station, in the Mail and Baggage Room at Union Station, by employees, Mr. Clyde Gunter and Mr. William Roemer, as clerical positions.

"(2) Claim that the two said positions shall be classified as clerks and rated at \$5.41 per day each retroactive to March 25, 1938.

"(3) The employees involved in or affected by said violation of rules be compensated in full for any monetary loss resulting from the Carrier's actions."

EMPLOYEES' STATEMENT OF FACTS: "The Tube Station in the Mail and Baggage Room at Union Station was formerly located on a balcony above the level of the sub-way floor. In 1927 the Scale House in the sub-way was enlarged and the Tube Station was moved to this point. There were two employees assigned to duty at this Tube Station who performed the necessary clerical duties in connection therewith. Due to the decline in business, these positions were abolished on August 1, 1931. The employees so assigned received the same compensation as an assistant foreman but exercised no supervision or authority whatever over any of the other employees in the Mail and Baggage Room.

"With the change in handling of certain business, their duties increased to such an extent that their entire eight hours is now taken up doing clerical work. The foreman has assigned these two named employees to perform these duties on the first and second shift and the duties which they perform are as follows:

First Shift (Mr. Clyde Gunter)

1. Checking all bills made during the 24 hour period ending at mid-night.
2. Stripping baggage. Receiving baggage from transfer companies.
3. Making report of all baggage on hand at 9:00 A. M.
4. Making report of all baggage in storage at 9:00 A. M. (in subway).
5. Entering in record book all carloads of cream or empty cans received on this shift. Making report to General Baggage Agent's Office of same. Delivering to Train Baggage Man or conductor

road Administration. During all of that time the company and the organization fully understood the application of the scope rule and no attempt was ever made to apply the clerks' qualification rule to any of the employees included in groups (b) and (c). We both understood that clerical ability was not a prerequisite to the employment or continuance in service of those classes of employees.

"When the National Agreement was cancelled at the termination of Federal Control we entered into negotiations which resulted in the execution of the present contract of February 1, 1922. During those negotiations the organization attempted to change the scope rule to include all employees subject to the performance of clerical work for a period of four hours or more daily irrespective of where or in what department or branch of a department, office or other place employed, including mail and baggage handlers, parcel room employees, gatemen, etc. This is positive evidence of the organization's understanding of the meaning and application of the scope and qualification rules of the National Agreement. We rejected their request and they finally agreed to a scope rule exactly the same, word for word, as that in the National Agreement and never made any further attempt to apply the clerks' qualification rule to other office and station employees, laborers, etc.

"It is reasonable to assume that if the organization understood the application of the scope rule in the National Agreement, they now understand the application of the same rule which has been in the present agreement for over 16 years. The separation of classes therein provided and their understanding of the same is further borne out by our agreed interpretation of the personal illness rule, which is applicable strictly to clerical forces only.

"Baggage and mail handlers, who are now and always have been classed as laborers under the scope rule, are not allowed to choose their particular jobs on a seniority basis. They are specifically exempted from the provisions of Rule 12, dealing with the bulletining of new positions or vacancies, and are assigned by the foremen to any part of the work incident to the handling of baggage and mail. They are also specifically exempted from the clerks' qualification rule—see paragraph (c) of Rule 4."

OPINION OF BOARD: The persistent contention of the carrier that the employees involved in this dispute are baggage handlers because it has classified them as baggage handlers is without merit. These employees, regardless of their designation by the carrier, are "clerks" within the meaning of Rule 4 of the Agreement between the parties if they 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 and reports, statements and similar work, and to the operation of office mechanical equipment and devices in connection with such duties and work."

While this rule is a definitive test for determining what work is clerical in character, the rule nevertheless requires interpretation in its application to individual situations. It clearly indicates that "writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements" is the essence of clerical work. The rule just as clearly provides flexibility in its application by reference to "similar work" and to "the operation of office mechanical equipment and devices in connection with such duties and work." To be classified under either of these categories, however, work must be reasonably incidental to the work which has been defined as the essence of the clerk's function. Moreover, it is to be remembered, Rule 4 does not encompass all clerical work performed in the service of the carrier. As this Division has previously pointed out, there are few, if any, employees of a carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties.

Accepting as proper the carrier's classification of the various activities involved in this dispute, the division of time of the fifty-six hours of the first shift covered by the joint check follows:

Clerical	18	hours	23	minutes
Non-clerical	18	"	3	"
Dead time	19	"	34	"

In terms of the same classification, the division of time of the second shift for the period covered by the joint check follows:

Clerical	13	hours	45	minutes
Non-clerical	10	"	1	"
Dead time	32	"	14	"

The carrier here admits that of the time worked during the two shifts slightly more than fifty per cent of the time is devoted to clerical work as defined by Rule 4. The petitioner, however, strongly urges that much of the work classified by the carrier as non-clerical should be classified as clerical; and that if this work were properly classified the employes in question, would clearly be clerks within the meaning of the rule relied upon.

The Division has examined the voluminous record with meticulous care. It has, as best it can, weighed, both quantitatively and qualitatively, the evidence disclosed by the joint check. It has carefully reviewed the conflicting contentions of the petitioner and the carrier. The evidence of record, however, does not convince the Division that these employes during the period covered by the joint check were regularly devoting "not less than four (4) hours per day" to clerical work within the meaning of Rule 4.

While it does not seem desirable to examine in detail all of the work about which there is disagreement, it may be worthwhile to comment briefly on one of the principal items in dispute. The joint check indicates that of the fifty-six hours of the first shift, the occupant devoted 8 hours and 19 minutes to "marking and separating of baggage." The joint check did not, however, purport to indicate what portion of this time was consumed in marking the baggage and what portion was consumed in the handling. The petitioner urges that all of this time should be regarded as having been expended in clerical work within the meaning of Rule 4. The Division, however, is of the opinion that this type of work is the work of a baggage handler, and that the task of marking the baggage, although in an elementary sense it is clerical in character, is in the situation before the Division merely an incident of baggage handling.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 evidence of record fails to sustain the position of the petitioner that the employes involved were devoting four (4) hours each day to clerical work within the meaning of Rule 4 of the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1939.