

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of System Board of Adjustment, Brotherhood of Railway and Steamship Clerks on Western Pacific Railroad that the position of third trick Train Desk Clerk at Oroville, Calif. be re-established and that the former occupant, G. M. Crum, and all other employees adversely affected be reimbursed for wage losses suffered retroactive to Jan. 12, 1938."

EMPLOYEES' STATEMENT OF FACTS: "The position of third trick Train Desk Clerk, 12 midnight to 8:00 A. M., at Oroville California was advertised for bids through Clerks' Circular No. 86-37 of September 27, 1937 at rate of \$5.90 per day. Clerks' Circular No. 91-37 assigned G. M. Crum to this position. On January 12, 1938 the position in question was abolished and the hours of the two remaining tricks were changed to 8:00 A. M., to 4:00 P. M., and 8:00 P. M. to 4:00 A. M. The clerical work remaining between 4:00 A. M. and 8:00 A. M., and 4:00 P. M., and 8:00 P. M., was performed by the Yardmaster on duty.

"The duties of the third trick Train Desk Clerk at Oroville are as follows:

- Checks waybills against inbound conductor's train list,
- Checks diversions, set-outs and pickups,
- Eliminate cars diverted or destined Oroville
- Pass Waybills for interchange
- Figure cars and tonnage for outbound trains
- Make up consist of outbound trains
- Write up outbound train list
- Checks train in yard if broken or if any cars were added
- Checks yard every eight hours
- Calls train crews

"A joint check was made of trains passing through Oroville Yard between the hours of 4:00 A. M., and 8:00 A. M., and 4:00 P. M. and 8:00 P. M. from January 13th, 1938 to August 30th, 1938, and on which practically all of the clerical work mentioned above was performed by the Yardmasters on each of the trains indicated by the joint check which is attached hereto and marked 'Employees' Exhibit A.'"

POSITION OF EMPLOYEES: "There is in effect an agreement on working conditions between the Western Pacific Railroad and this Brotherhood bearing effective date of October 1, 1930 from which the following rules are cited:

'Rule 1. These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted in Rules 2 and 3.

"Carrier contends that it has the right to pass trains through its yards and over its trackage at any time during the day or night. In doing so there are a few duties which can be performed only at the time a train is passing through the yard. During such periods as the volume of traffic justifies the employment of a clerk, the duties are performed by such clerk, but when the volume is such that it does not justify the employment of a clerk the yardmaster is required to perform the few essential clerical duties.

"Carrier maintains that there is nothing in the clerks' schedule which prohibits a yardmaster from obtaining these essential records when the volume of business does not justify the employment of a clerk and certainly it cannot be contended that about thirty minutes work in an eight hour shift warrants the employment of a clerk.

"Inasmuch as receipt of copy of President Harrison's letter December 18, 1939 is the first intimation given to Carrier it was the intention of the Clerks' Organization to appeal to your honorable Board in this dispute, we respectfully request opportunity of discussing and answering in detail, any statements made by employes in connection with this dispute and opportunity to submit evidence and arguments in connection with statements of the employes.

Carrier requests that claim of employes be declined."

OPINION OF BOARD: The statements of the parties and their contentions are set forth above. Briefly, claiming reduction in volume of business at the station mentioned in the claim, the carrier abolished the position of the third trick train desk clerk. There remained more work than the first and second trick clerks could accomplish, partly due to volume and partly to the fact that all the work to be done at that station did not come within the assigned hours of the first and second trick clerks. The carrier assigned the additional work to yardmasters, employes working under a different agreement, and wholly without the scope of the Agreement governing here. The question is neither new nor novel. While, of course, never gainsaying that carriers may abolish positions included in agreements where there is no work pertaining thereto to be performed, still, and with practical unanimity, the decisions of this Division have been to the effect that where work within the involved agreement remains to be done, as here, it is subject thereto, and must be performed by the class of employes to which the agreement applies. See Awards Nos. 751, 736, 637, 631, and many others.

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 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 carrier breached the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1940.