Award No. 1418
Docket No. CL-1435

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: "CLAIM OF THE SYSTEM COMMITTEE OF THE BROTHERHOOD THAT:

(1) Carrier has violated and is continuing to violate the rules of Clerks' agreement by assigning and requiring employes not covered by that agreement to prepare and record on scale tickets initials, numbers, lightweights, weather conditions and the actual weighing of cars, and,

(2) That such violations and practices be discontinued immediately and all such work assigned to clerical employes holding seniority rights on the Muskogee Station and Yard Seniority District, and,

(3) That such employes affected by said violation of agreement rules be compensated in full for any monetary loss resulting from carrier's action, retroactive to September 16, 1937, date claim filed."

EMPLOYES' STATEMENT OF FACTS: "It is the practice of the carrier to have switch Foremen and Yard-Masters prepare scale tickets, record the necessary information thereon, and weigh all cars requiring weighing in Muskogee Yards.

"During the coal season, usually extending from July 15th to March 15th each year, cars weighing in this Yard amounts to approximately forty (40) cars per day.

"The Carrier maintains the following clerical positions in the Muskogee Station and Yard Seniority District.

Muskogee	Yard	Proper—	1	Clerk....	6:00 A.M. to	2:00 P.M.
"	"	"	1	"	11:00 A.M. to	8:00 P.M.
					off 3:00 P.M. to	4:00 P.M. lunch
"	"	"	1	"	12:00 Noon to	9:00 P.M.
					off 3:30 P.M. to	4:30 P.M. lunch
"	"	"	1	"	3:59 P.M. to	11:59 P.M.
"	"	"	1	"	11:59 P.M. to	7:59 A.M.

Muskogee Freight Office—1 Clerk.... 8:00 A.M. to 5:00 P.M."

POSITION OF EMPLOYES: "There is in evidence an agreement between the parties bearing effective date of June 14, 1921, and the following rules thereof are quoted:

'RULE 1—EMPLOYES AFFECTED

'These rules shall govern the hours of service and working conditions of the following employes, subject to the exceptions noted below:

but the General Chairman was himself a yard clerk and had been employed in the yard office a short distance from the scales for ten years prior to the date of his letter, and a part of his duties had been the making of the weight reports, Form CS-56, for the cars weighed on the scales, with no previous complaint or exception with reference to the weighing being done by the engine foreman and yardmasters, who had been sworn in by the Western Weighing and Inspection Bureau as weighmasters, and who had performed this service at all times previously."

POSITION OF CARRIER: "The carrier is without information as to Paragraph 3 of the 'Statement of Claim' as set out in the notice of intention to file ex parte submission. It has not been informed what employes are claimed to have been affected by the alleged violation of the agreement, nor in what way monetary loss is claimed to have resulted. The employes should be required to furnish proper information that will permit the carrier to determine who the claimants are and in what way they claim to have been affected.

"The clerks have no rule or practice or any other basis for claiming that certain work should be assigned to them which they have never performed, and which does not even represent clerical work. Even if it were clerical work they could not claim the exclusive right to perform it.

"The effect of the request of the Clerks is that they be permitted to leave their own work to go to the scales and perform the operation of balancing the beam, operating the lever and marking the scale tickets.

"Award 806, Docket CL-792 of the Third Division, says in the second paragraph of the 'Opinion of Board' in part:

> '* * * Moreover, it is to be remembered that 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, employes of a carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties.'

"Awards 3943 and 3944, Dockets 5981 and 5982, of the First Division of the National Railroad Adjustment Board, Brotherhood of Railroad Trainmen versus the Baltimore and Ohio Railroad Company, denied claims of yard foremen filed because of being required to weigh cars when there was no rule in the trainmen's agreement covering the weighing of cars or positions of weighmasters, the work having been formerly done by yardmasters and yard clerks. In its Findings the Board said:

> 'Evidence does not indicate that this claim is supported either by a contract provision or that it arises from conflict with long established and mutually accepted procedure.'

"There is no proper ground upon which such a contention can be made and the claim should be denied.

"Since this is an ex parte case, this submission has been prepared without seeing the employes' statement of facts or their contention as filed with the Board, and the carrier reserves the right to make a further statement when it is informed of the contention of the petitioner, and requests an opportunity to answer in writing any allegation not answered by this submission."

OPINION OF BOARD: Rule 1 of the agreement (Scope Rule) does not enumerate the kind of work to which the agreement applies, such as weighing in this instance, but only enumerates the type of employes covered by the agreement.

Not all clerical work comes within Rule 2. Not all clerical work is performed by clerical and other employes. As said in Award No. 806, "There

are few, if any, employes of a carrier, from the president down to the laborer, who do not perform some clerical work in connection with their regularly assigned duties."

The assignment of the work in question to the Yardmaster and/or the Yard Foreman antedates the agreement with claimant Brotherhood.

The insertion of date, station, initial and number, and tare weight is incidental to the duties performed by the Yardmaster and Yard Foreman when acting as Weighmasters.

In the absence of more explicit language in the agreement, it cannot be held that the practice involved in the instant case constitutes a violation of the agreement, and the claim should be denied.

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 fails to disclose a violation 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 12th day of May, 1941.