

Award No. 1689
Docket No. CL-1730

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

SUGARLAND RAILWAY COMPANY

ASHERTON & GULF RAILWAY COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"(a) The carrier is violating the Clerks' Agreement at Beaumont, Texas by requiring or permitting the Engine Foreman to weigh cars. Also

"(b) Claim that all employees involved in or affected by this agreement violation be compensated for all losses sustained."

There is in evidence an agreement between the parties bearing effective date of November 1, 1940.

EMPLOYEES' STATEMENT OF FACTS: "The Engine Foreman at Beaumont, Texas weighs all cars at that point.

"The number of cars weighed will average 150 each month."

POSITION OF EMPLOYEES: "The employees quote the following rules in support of this claim:

'Rule 1. Employees Affected.

'(a) These rules shall govern the hours of service and working conditions of all of the following class of employees of the above named railroads and subsidiary companies now in existence or hereafter organized.

'Group 1. Clerks, Machine Operators, such as typewriters, adding and calculating machines, bookkeeping, accounting, timekeeping and statistical machines, dictaphones, key-punch, teletype (except teletypes used exclusively in the transmission of messages and reports

OPINION OF BOARD: In this case there is no dispute as to the facts. It appears that at Beaumont, Texas, engine foremen, otherwise known as yard conductors, are sworn weighmasters and have done the weighing of cars there for as much as seventeen years. The cars are placed on the scale by the yard engine, and the engine foreman standing at the scale beam presses a lever and the weight is automatically stamped on a ticket. He then writes the car number and the tare weight on the ticket and delivers the same at the yard office about half a mile away where the yard clerks enter the weight on the way bills and perform any other necessary clerical work. The process of weighing a car takes but a few minutes and the average number weighed at Beaumont is about five a day.

Rule 1 and the essential part of Rule 2 of the Agreement effective November 1, 1940, reads as follows:

"Rule 1. Employees Affected.

"(a) These rules shall govern the hours of service and working conditions of all the following class of employees of the above named railroads and subsidiary companies now in existence or hereafter organized.

"Group 1. Clerks, Machine Operators, such as typewriters, adding and calculating machines, bookkeeping, accounting, timekeeping and statistical machines, dictaphones, key-punch, teletype (except teletypes used exclusively in the transmission of messages and reports and located in offices which are equipped with telegraph facilities), and all other similar equipment used in the performance of clerical work or in lieu of clerical work.

"Group 2. All other office, station and store employees, including office boys, messengers, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, telephone switchboard operators, elevator operators, office, station, warehouse, and store watchmen, janitors, and all other employees performing similar work.

"Group 3. Laborers employed in and around stations, stores and warehouses.

"(b) Positions referred to in this agreement belongs to the employees covered thereby and no position shall be removed from this agreement except by agreement.

"(c) This agreement shall not apply to individuals where amounts of less than thirty dollars (\$30) per month are paid for special service which only takes a portion of their time from outside employment or business, or to individuals performing personal service not a part of the duty of the carrier."

"Rule 2. Classification.

"(a) Employees who are used three (3) hours or more for the majority of the working days of the month, in the compiling, writing, and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements and similar work and to the operation of office mechanical equipment and devices shall be designated as clerks. The above definition includes Station, Storehouse and Warehouse Foremen, Checkers, Tallymen, Deliverymen, Ticket Clerks, Yard Checkers, and Crew Dispatchers."

It is quite true as claimed by the Carrier that the scope rule refers to positions. This is but a recognition of the fact that in the nature of things there is certain clerical work which must be performed by employees not covered by the Agreement. Award 806. In fact there are very few employees

on a railroad who do not at some time perform clerical work as an incident of their regular duties. At the same time, the work ordinarily performed by the employees filling the designated positions belongs to those who are covered by the Agreement and the Carrier has no right to assign it to other employees or to outsiders. Awards 323, 385, 425, 637, 751, 753, 1122, 1125. Paragraph (a) of the Memorandum Agreement effective November 1, 1940, and Rule 1 (b) of the Agreement are but declaratory of this well-recognized principle.

The question here is simply this. Does the work of weighing cars at Beaumont belong exclusively to those covered by the Agreement?

It should be noted that, though the Agreement enumerates many positions, that of "weighmaster" is not mentioned. Nor by any possibility could he come under the general designation of a "clerk," as that word is defined in Rule 2 (a). The Committee points out that there were at one time employees covered by the Clerks' Agreement designated as "weighmasters." But this was ten years or more ago and the Carrier says that this designation applied only to two men in the San Antonio yards and has long since been abandoned.

In spite of the fact that there is no designated position to which the work here in question has been assigned, the Committee contends that the work belongs exclusively to those covered by the Agreement. In determining this question we must look to see what has been the practice and whether there is evidence of actual acquiescence in it. Award 615.

It appears that bulletins for various clerical positions such as Line Desk Clerk, Yard Clerk, Night Baggage Clerk, General Clerk, and Chief Yard Clerk at different points in Texas, such as Corpus Christi, Austin, Taylor, San Antonio, Houston, Victoria, Robstown and Kingsville have called for the weighing of cars as part of the work to be performed. This evidence is undoubtedly significant as showing that this work at a number of important places has been done by the clerical force. But the question still remains: Does this work belong exclusively to that force? The most important evidence on this point is that the record before us shows that for a period of at least sixteen years at Beaumont without any protest on the part of the employees this work had been performed by those not covered by the Agreement. Protest was first made in April, 1940, by J. L. Dyer, General Chairman. This was only five months before the effective date of the present Rules Agreement. We cannot overlook the fact that the Carrier and the Committee, with a full knowledge of all the facts before them and the pending controversy undoubtedly fresh in their minds, failed to mention in their Agreement the position of "weighmaster" as belonging to the employees covered by the Agreement or that the work of weighing cars was the exclusive province of those covered by its terms. We must hold that the Agreement was entered into with full knowledge of the long established practice at Beaumont.

The Committee calls attention to a letter dated February 1, 1941, apparently from some official of the Carrier to the yardmaster at the Harlingen Yard directing him not to weigh any more cars during the meal period of the yard clerks. The Committee argues that this constitutes an admission by the Carrier that it was a violation of the Agreement for anyone but the Yard Clerks to weigh the cars. That may be the implication of the letter and it may not be. Be that as it may, it does not in the light of the whole record seem to us to be a matter of particular importance.

The present case is substantially the same as Docket CL-1435, Award 1418. We see no reason to come to a different decision than was arrived at there.

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 there was no violation of the Agreement by the Carrier in permitting the engine foreman to weigh cars at Beaumont.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1942.