

Award No. 1708
Docket No. CL-1640

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Carl B. Stiger, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement and continues to violate such Agreement when it permits yardmasters and other train service employees, none of whom are covered by the scope and operation of the Clerks' Agreement to perform clerical work at Buffalo, New York, and

The Carrier shall now be required to bulletin and assign this clerical work to the senior qualified applicant covered by the Clerks' Agreement, and to reimburse such senior qualified applicant and other employees affected, for any and all wage loss suffered retroactive to August 3, 1940."

EMPLOYEES' STATEMENT OF FACTS: Prior to 1929 there were 33 yard clerks working in the East Buffalo Yard of the Erie Railroad Company. At that time all train sheets, pulling waybills for trains, chalking of cars, taking of seal and ventilation records were taken care of exclusively by these yard clerks. As a result of the reduction in business during the depression, these forces were gradually reduced until only 18 clerks remained employed at this point, and the remaining work was performed by these clerks. When the volume of business began to increase, instead of hiring or calling back yard clerks into service, the carrier removed other duties and work from the then existing force and assigned it to yardmasters, conductors and trainmen, none of whom are covered by the scope and operation of the Clerks' Agreement.

At one time car cards were made up in the office by yard clerks from train sheets and they would then be taken out to the train and tacked to the car which gave the information as to where from and where to for yard handling purposes. The card form was later discontinued and the yard clerk would take the train sheet and a stick of chalk and while walking along side of train would chalk destination of each car in train so that when train is handled the cars are switched to their respective tracks from the chalking on the cars. This was always done by the clerks until business picked up and instead of increasing the force, the carrier required the yardmasters to chalk the cars while the cars were being handled over the hump. As a result of the assigning of this work to employees not covered by the Clerks' Agreement, the carrier has been able to maintain its force without adding any additional clerical employees to perform the increased volume of work. In March 1935, the representation of the employees was changed and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express

than clerks have customarily performed work of chalking cars incidental to their regular duties at Buffalo, N. Y. and at other locations.

4. Rule 1, Page 9 of Rules and Regulations effective September 1, 1936 is applicable to employees and does not define types of work in its coverage.
5. Previous awards by Third Division support the position of the railroad, particularly Awards 615, 809 and 1314.
6. Since the employees did not ask the railroad to join in a joint submission, but have taken this case to the Third Division ex parte, this submission by the railroad has been prepared without seeing the employees' statement of facts or their contentions as filed with the Third Division, and the railroad reserves the right to make a further statement when informed of the contentions of the employees.

OPINION OF BOARD: The question is, Was the chalking of the cars incidental to several positions not within the scope of the agreement or did the work belong exclusively to the clerks' positions?

The agreement between the parties became effective September 1, 1936.

Prior to 1930 the work was performed by clerks. From 1930 to the date of the agreement, and to the time the first protest was filed in 1940, the procedure was substantially as follows: The crew on arriving trains would copy and deliver a prepared consist or train list to the yardmaster who delivered it to the bill clerk to re-check. The train sheet, when completed, showed the disposition to be made of all the cars by the yard crews. After the re-check was made the supervisory officer would designate an employee from the yardmasters, yard conductors, yard brakemen or yard clerks to chalk the cars pursuant to the directions on the train sheet. It does not appear that the bill clerk or any other clerk had authority to designate chalkers or claimed such authority during this period.

The Petitioner did not challenge this procedure until August 1940—four years after the effective date of the agreement. For a period of 10 years this work was performed without protest by employees not covered by the agreement.

The Board is of the opinion that, under the circumstances, the work of chalking cars at the time of the agreement was incidental to several positions not included therein and did not belong exclusively to the clerks under the agreement.

It follows that the work was not subject to the agreement and the Carrier did not violate it in permitting employees other than clerks to chalk cars at Buffalo, N. Y.

The following awards are in harmony with the decision of the Board: 806, 809, 931, 1314, 1593, 1418, 1689, and 1656.

The awards cited by the Employees adhering to the well established rule of this Division that work subject to an agreement cannot be removed therefrom are not applicable to this dispute.

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 employees involved in this dispute are respectively carrier and employees 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 did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of February, 1942.