

Award No. 2133

Docket No. CL-2120

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**

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood:

(1) That the senior extra clerk, Packerton, Pa., be reimbursed for any and all wage loss suffered by reason of the carrier's violation of the Clerks' Agreement in discontinuing the third trick clerical position at P.D. (Eastbound) Yard and turning the work over to the Assistant General Yard Master who performed this work from June 16, 1938 until April 1, 1940 when the position was restored.

(2) That clerks working the 3:00 P. M. to 11:00 P. M. and 11:00 P. M. to 7:00 A. M. tricks at the General Yard Master's Office, Packerton, Pa. be paid the difference between \$134.70 (clerical rate) and \$265.00 (Yard Master's rate) as a result of the Asst. General Yard Master being transformed from this office to the P.D. (Eastbound) office, the hours of service being 7:00 P. M. to 5:00 A. M. The clerical employees were required to assume the duties and responsibilities of the position from the date of his transfer, June 16, 1938.

(3) That the senior extra clerk be reimbursed for any and all wage loss suffered from June 16, 1938 when the position of clerk, General Yard Master's Office, Packerton, was discontinued and these clerical duties were performed, and are still being performed, by the General Yard Master.

(4) That the clerical employees on the 7:00 A. M. to 3:00 P. M. and the 3:00 P. M. to 11:00 P. M. tricks at the west bound yard, Packerton, Pa. be paid the difference between \$134.70 (clerical rate) and \$265.00 (Yard Master's rate) from June 16, 1938 when the carrier discontinued two (2) Yard Master's positions and assigned the duties and responsibilities to the clerical positions.

EMPLOYEES' STATEMENT OF FACTS: The Lehigh Valley Railroad maintains at Packerton, Pa. three (3) yard offices, namely, General Yard Master's office, P.D. (Eastbound) Office and Westbound Office. The distance from the General Yard Master's office to the P.D. (Eastbound) office is one mile. From the General Yard Master's Office to the Westbound Office is one-half mile.

The Carrier denies the assertion made by the employes on page 7 of the Submission that the Association of Lehigh Valley Yardmasters had made formal protest to the Management on account of the changes made at Packerton Yard.

Neither Rules 1 nor 2 of the current schedule allocates all clerical work on the railroad to the Brotherhood of Railway and Steamship Clerks, etc. Part of the Yardmaster's duties consists of clerical work. The fact that the clerk also does some clerical work, even if it be similar work, during his tour of duty, does not give him exclusive right to do so. Rule 1, the Scope Rule, designates what positions are to be covered by the agreement but does not give a monopoly of any kind of work to the organization holding the agreement. Rule 2 defines a clerk as one who regularly does routine clerical work not less than four hours per day. It is the contention here that such clerical work as the General Yardmaster and Assistant General Yardmaster performed was only that incidental to their positions and was not such as should be exclusively allocated to the clerks. Moreover, such clerical work as these two officers performed did not require them to devote four hours or more of their time regularly to its performance. In Award No. 1418 of this Division, the claim was made that the Carrier had violated the provisions of the Clerks' Agreement by requiring switch foremen and yardmasters to prepare scale tickets, record necessary information thereon and weigh all cars requiring weighing in Muskogee yards. The Carrier admitted that the employes mentioned were doing that kind of work and justified the practice on the ground that the clerks had no rule or practice or any other basis for claiming that such work should be assigned to them. It was a long established practice of that carrier to have such work performed by switch foremen and yardmasters. In denying the claim, this Division held that Rule 1 of the Clerks' Agreement (Scope Rule) does not enumerate the kind of work to which the agreement applies, such as weighing in that particular 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 employes. As was stated in Award 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 Carrier contends that the clerical work performed by the General Yardmaster and Assistant General Yardmaster was such as would clearly come within the scope of that decision, namely, work that was purely incidental to their regular duties. (See also Award No. 148, Third Division.)

In conclusion, it is the Carrier's position that the yard clerks at no time were required to assume the duties and responsibilities of a yardmaster as there was always one or more yardmasters available at Packerton with whom the clerks could get in touch, if necessary. It is also the Carrier's contention that the General Yardmaster or Assistant General Yardmaster performed no work which belonged exclusively to the clerks, but only such clerical work as they had theretofore shared with the clerks as work which might properly have been done by either class of employe.

The Carrier submits that there has been no violation by the Carrier of the terms of the agreement and that this claim should be dismissed as not supported by the evidence.

OPINION OF BOARD: This case arises out of the attempt of the Carrier to reorganize its yard and yard office forces at Packerton, Pa. Certain positions were abolished. It is claimed by the Committee that these changes resulted in violating the agreement in two main respects—firstly that certain clerical positions were abolished and the duties of the occupants turned over to yardmasters, secondly that certain clerks were called on to perform the duties of yardmasters. In the first case compensation is asked by the clerks for their wage loss, in the second the clerks claim to be entitled to the

wages of yardmasters for the time they were performing yardmaster's duties. In the view which we take of the case we shall not consider the Carrier's contention that this second claim is not properly before this Board.

There are two main yards, the Eastbound, consisting of ten tracks, the Westbound with nineteen and nine shop tracks. These are handled from three yard offices, the Packerton Yard Office or General Yard Office, the Eastbound Yard Office and the Westbound Yard Office. The General Yardmaster who is located at the Packerton Yard Office had both before and after the change assigned hours of 7:00 A. M. to 5:00 P. M. This office is about a mile from the Eastbound Yard and about a half mile from the Westbound Yard Office. The General Yardmaster has general supervision over the three offices and the two yards. The following table will show the situation both before and after the change complained of.

Prior to June 16, 1938		After June 16, 1938
General Yard Master's Office:		
General Yard Master	7 A.M. to 5 P.M.	7 A.M. to 5 P.M.
Asst. Gen. Yard Master	7 P.M. to 5 P.M.	
Yard Clerk	7 A.M. to 3 P.M.	
Yard Clerk	3 P.M. to 11 P.M.	3 P.M. to 11 P.M.
Yard Clerk	11 P.M. to 7 A.M.	11 P.M. to 7 A.M.
Eastbound Yard Office:		
Yard Master	7 A.M. to 3 P.M.	7 A.M. to 3 P.M.
Yard Master	3 P.M. to 11 P.M.	3 P.M. to 11 P.M.
*Yard Master	11 P.M. to 7 A.M.	Asst. G. Y. M. 10:30 P.M. to 6:30 A.M.
Yard Clerk	7 A.M. to 3 P.M.	9 A.M. to 5 P.M.
Yard Clerk	3 P.M. to 11 P.M.	5 P.M. to 1 A.M.
Yard Clerk	11 P.M. to 7 A.M.	
Westbound Yard Office:		
Yard Master	7 A.M. to 3 P.M.	
Yard Master	3 P.M. to 11 P.M.	
Yard Master	11 P.M. to 7 A.M.	11 P.M. to 7 A.M.
Yard Clerk	11 P.M. to 7 A.M.	11 P.M. to 7 A.M.
Yard Clerk		7 A.M. to 3 P.M.
Yard Clerk		3 P.M. to 11 P.M.

The Committee claims that it was necessary for the yardmasters to take over the duties of the yard clerks who were dropped, and for the yard clerks to perform some of the duties of the yardmasters.

There is considerable discussion as to whether at the time of the change the work in the yards had decreased. This is a matter of relatively minor importance. The question is whether, for whatever cause the change was made, there was a violation of the agreement.

The situation here involved is not a new one. In opinions in several awards of the Fourth Division the problem has been discussed. See Awards 86 and 88. These were cases where yardmasters claimed that their duties had been taken over by clerks. The opinions in those awards clearly show that the duties of yardmasters are varied, that essentially this work is supervisory, and that as an incident to these duties yardmasters of necessity perform some clerical work. Likewise in some instances clerks under the direction of yardmasters perform certain work which in other cases may be done by the yardmasters themselves. It is, therefore, evident that when work such as this in a yard is reallocated there is established the basis for a controversy. There is, accordingly, something more to the problem now before us than to show merely that some work formerly done by the clerks is now being done by yardmasters and that some work formerly done by yardmasters is now being done by clerks. The border line which marks

the division between these two branches of work is so shadowy it is incumbent on those who claim a violation of the agreement to show that the yardmasters have in fact become clerks and that the clerks have been entrusted with such supervisory and responsible duties that they are in fact yardmasters. There is always a temptation under such circumstances as these for the carrier to overstep the line in an effort to save money. A careful reading of the record in this case may arouse a suspicion that it has done so here, but it is only a suspicion and more than that is required before we can find a violation of the agreement.

There is one element in this case which seems to us of great importance. That is the attitude of the Committee toward this particular claim. It was not the original contention of the Committee that the scope rule had been violated, but that by reason of an increase in the duties and responsibilities of the clerks they were entitled to more compensation in accordance with the provisions of Rule 9 of the agreement which reads as follows:

"Rule 9. When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for that position will be subject to adjustment by mutual agreement with the Representatives, but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

A letter from J. J. Buckley, General Chairman, dated April 7, 1941 to J. N. Haines, General Manager of the Carrier, is most significant. This letter reads as follows:

"April 7, 1941.
Case C-40-20

Mr. J. N. Haines, General Manager,
Lehigh Valley Railroad Co.
Bethlehem, Pa.

Dear Sir:

This will acknowledge receipt of your letter of March 17th, file 805.5—C-40-20, about the adjustment of rate on five (5) positions at Packerton, same having reference to the conference of March 7th.

Since June, 1938, we have been attempting to secure an adjustment on seven (7) positions at Packerton from the rates in effect to \$190.00 per month, due to the abolishment of two (2) yardmaster's positions and one clerical position. The added duties and responsibilities placed on the employees at this point entitle them to consideration under Rule 9.

The adjustment on five (5) of these positions of five dollars (\$5.00) per month, effective January 16, 1941, is not in accord with the views of the Committee. Rule No. 9 provides for 'adjustment by mutual agreement with the Representatives.' This feature was not carried out in this case.

The Committee requests the seven (7) positions outlined in my letter of November 21, 1939 be increased to \$190.00 per month and reimbursed for wage loss suffered from June 16, 1938 when abolishment of yardmaster's positions took place.

Will you please advise?

Yours truly,

(s) J. J. Buckley
General Chairman."

We do not assume that the Committee in writing this letter was asking for increased pay for the men because they had become yardmasters, for to have done so would have been to join with the Carrier in action which would have been in effect a violation of the agreement of the Carrier with the yardmasters. What this letter was in effect asking for was an increase in pay for extra work which came within the scope of the clerks' agreement. The provisions of Rule 9 surely do not apply to any work outside the agreement. And we think it is also important to note that this letter makes no complaint that the clerks' duties were being performed by the yardmasters. The attitude which the Committee took at the time when this letter was written is inconsistent with its view with respect to the present claim.

The evidence in the record fails to substantiate the present claims.

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;

That the Committee has failed to establish that the agreement has been violated as claimed.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.