

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Bruce Blake, Referee

PARTIES TO DISPUTE:

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

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 Employes that carrier is violating the spirit and intent of the Clerks' Agreement when it requires Yard Clerks and Number Takers employed at Binghamton, N. Y. to bleed cars every day as part of their regular assignment, and

(a) That employes William Costello, L. F. Corcoran, C. V. McKinney, F. L. Downey and other Yard Clerks or Number Takers employed at that point be paid the difference between their established rate of pay and rate applying to Car Inspectors for time consumed each day required to bleed cars retroactive to February 1, 1942, and

(b) That carrier be required to discontinue the practice of using Yard Clerks and other Clerks to bleed cars which is properly the work of another class or craft.

EMPLOYES' STATEMENT OF FACTS: Subsequent to the effective date of the Clerks' Agreement dated September 1, 1936, Carrier's attention was directed to the fact that employes at Binghamton, N. Y. were required to perform duties of Bleeding cars, which duties the Clerks' Committee contended were not within the scope of the Clerks' Agreement.

After repeated efforts to break up this practice covering many months, claim was finally instituted for Yard Brakeman's rate of pay for all clerical employes who were required to Bleed cars as a part of their daily assignment, and as subsequent investigation developed bleeding cars is classified in the occupational classification for reporting information on railroad employes under symbol KCR-32 reporting Division 72 which is described as follows:—

"72 Carmen (c) included under division of positions falling under the following distinctive classes:

Carmen (freight) KCR 31
Carmen (Inspector) KCR 32"

The classification "Air Bleeder" is listed on page 270 and refers to page 210, which page refers to reporting Division No. 72, page 35.

Our claim was corrected for car inspector's rate instead of Yard Brakeman's rate as evidenced by Employes' Exhibit "A".

"In going into this matter further I find that the Clerks at Binghamton have been doing this work for a period of about six (6) years and not twenty-three (23) as stated by you during our discussion."

Our records show that they have been doing it for more than twenty (20) years; however, even on the basis of the General Chairman's admittance, they have now been performing this service for at least ten (10) years and after conference with the Division Chairman and clerks involved during 1939 the clerks agreed that the performance of this work was not in violation of the agreement.

6. Claim is not supported by any negotiated rule.
7. Rules and Regulations effective September 1, 1936 are applicable to employes and do not define types of work in its coverage.
8. The Third Division does not have jurisdiction because this is a request for increased rate of pay and this is confirmed in letter of General Chairman to Superintendent dated May 12, 1941 in which he says in part,—

"You have apparently misconstrued my letter, as we are not complaining about the employes bleeding the cars at Binghamton, but we are requesting that they be paid the rate for this service, which in accordance with the provisions of the Trainmen's Agreement, and as stated in the third paragraph of my letter, the Trainmen's claim is the correct rate of pay on these positions."

9. The bleeding of air, referred to by the employes, consists of pulling the air release rod on each car when they are making a check of the cars to secure car numbers, etc., and this takes only a few seconds on each car. If the clerks did not perform this work, it would be necessary to send another man to perform the work.

OPINION OF BOARD: The First, Second and Fourth Divisions have had opportunities to say to what craft the work of bleeding cars belongs. The result of their decisions is that it belongs to no particular craft but may be done by the members of any group as an incident to their regular work. See: First Division Awards Nos. 1196, 5984; Second Division Awards Nos. 32, 682; Fourth Division Award No. 87. In the latter Award, which reflects the substance of the other decisions cited, it was said:

"The bleeding of cars is not strictly the function of a yardmaster, but may be done by other employes and has through many years of railroading."

Implicit in the submission of the System Committee is recognition of this practice, for it has changed its theory as to the rate of pay applicable to the claim—finally basing it upon the rate paid car inspectors. But, even so, they say: "Without attempting to decide to which class or craft the bleeding of cars belongs, the employes are contending for the rate based on the **occupational classification** which defines bleeding as Car Inspector's work."

We do not think the occupational classification can be said to be controlling in view of what was said in Second Division Award No. 32: "Coupling and uncoupling air hose is recognized as carmen's work when performed in connection with their regular duties of inspection and repairs. However it is impracticable to confine this work to carmen at loading platforms, or on line of road and in switching cars."

We are satisfied that, in practice and under the decisions in the Awards cited, the work of bleeding cars has never been considered as belonging exclusively to any particular class or craft. And it may be done by the members of any class or craft provided it is incidental to their regular work.

Notwithstanding it appears that four or five hours a day are consumed by claimants in bleeding cars, we think the work is done merely incidentally with their regular work as clerks.

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 establish a violation of the agreement by the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1943.