

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

PACIFIC ELECTRIC RAILWAY COMPANY

STATEMENT OR CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the Scope Rule provisions of Clerks' Agreement when, on April 16, 1943, it established at Butte Street Yard Office, Los Angeles, position of Terminal Foreman, which classification does not come within the Scope Rule of Clerks' Agreement.

(b) Carrier abolish position of Terminal Foreman at Butte Street Yard Office and establish in lieu thereof, position titled Crew Dispatcher, coming within the scope of Clerks' Agreement.

(c) Coincident with abolishment of Terminal Foreman position at Butte Street Yard Office, and establishment in lieu thereof, position of Crew Dispatcher, there shall be established two additional positions classified as Crew Dispatcher and rated at \$260.00 per month, in lieu of two positions of Night Chief Yard Clerk now occupied by Messrs. H. W. Thorne and A. R. Morse.

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing effective date of April 1, 1935, as to rules and working conditions, is in effect, between the parties to this dispute.

Prior to April 16, 1943, and for many years prior to the effective date of our Agreement, April 1, 1935, all work pertaining to the handling of freight crew boards, calling of train and engine crews, answering telephone inquiries of crew members and extra men, checking time cards and yard registers, and other clerical work in connection therewith, was performed by clerical employees occupying positions coming within the scope of the Agreement between the Brotherhood and the Pacific Electric Railway Company, effective date April 1, 1935.

Location of freight crew boards and titles of clerical positions handling all work pertaining to their operation on April 15, 1943 were as follows:

San Bernardino	General Clerk	8:00 A. M. — 5:00 P. M.
State Street Yard	Car Clerk	13:01 A. M. — 8:00 A. M.
	Car Clerk	8:00 A. M. — 4:00 P. M.
	Car Clerk	4:00 P. M. — 12:00 P. M.
(Butte Street Yard)	Night Chief Clerk	12:01 A. M. — 8:00 A. M.
Formerly)	Chief Yard Clerk	8:00 A. M. — 4:00 P. M.
(8th Street Yard)	Night Chief Clerk	4:00 P. M. — 12:00 P. M.

Effective April 16, 1943, the carrier established position of Terminal Foreman at Butte Street Yard Office, rate \$260.00 per month, hours of assignment 8:00 A. M. to 4:00 P. M.

On this property, positions designated as Terminal Foreman are covered by an Agreement, dated November 1, 1936, between the American Train Dispatchers Association and the Pacific Electric Railway Company.

or not the work is properly within the jurisdiction of the Clerks' Agreement or, contrarily, properly within the scope of the Agreement with the American Train Dispatchers Association, is the question to be determined. If the Carrier agrees with the Clerks the American Train Dispatchers Association will immediately progress claim charging violation of its scope rule. If the Carrier does not agree with the Clerks this latter organization will merely continue the present dispute or institute a new dispute contending violation of its scope rule. This again illustrates the immediate need for determination and agreement between these organizations or by the National Mediation Board as to which organization may be considered the proper representative.

Paragraph "(c)" of the instant claim requests establishment of two additional positions of Crew Dispatcher at Butte Street Yard in lieu of two positions of Night Chief Yard Clerk now occupied by Messrs. Thorne and Morse.

The Board is advised that the present rates of pay, the present titles and the duties assigned these two incumbents are the result of collective bargaining under the processes of the Railway Labor Act as between the Carrier and the Clerks' Organization and that there have been no changes. Thus, if it is the desire of the Clerks' Organization to change, alter, or amend the title, the rate of pay, or the working conditions on these positions it should be properly submitted by the Organization as a formal request under Section 6 of the Railway Labor Act and should thereafter be concluded under normal processes of collective bargaining. The Carrier submits that to ask the National Railroad Adjustment Board for a decision in matters of this kind is entirely improper under the Railway Labor Act and, in the Carrier's opinion, is an attempt to circumvent the collective bargaining procedures set up in the Railway Labor Act. By this, the Carrier does not wish to state or imply that it should determine or suggest what matters the National Railroad Adjustment Board deems it advisable to take jurisdiction over or make disposition of. The Carrier expresses opinion only that if such practice is continued it will have an adverse effect on the normal processes contemplated under the Railway Labor Act.

It is noted, also, that a rate of \$260 per month is requested. This rate of pay is the rate of pay in effect on Carrier's lines for the classification of Terminal Foreman prior to conclusion of National Mediation Board Case A-1572 which increased rates of pay for this classification \$21.60 per month in accordance with national handling of the American Train Dispatchers Association's request for increases in rates of pay.

No such rate has ever been negotiated with the Clerks' Organization, nor does the Carrier deem such a rate proper should such negotiations take place in view of the work assignment of Messrs. Thorne and Morse. Such a rate is entirely excessive in the area for Crew Dispatchers.

In view of the record and the controlling facts, the Board is respectfully requested to remand the dispute back to the parties with instructions to the organization to use its best efforts in concluding the present organizational dispute with the American Train Dispatchers Association.

OPINION OF BOARD: The dispute in this docket covers two positions involved in a counter claim submitted by the American Train Dispatchers Association, Docket TD-2688. A claim submitted by the same Association covering a similar dispute at another location is before the Board in Docket TD-2687.

Based on all evidence of record, the Board concludes the positions involved in this dispute come within the scope of the Clerks' Agreement and are not positions requiring the classification of Terminal Foreman or other classification than is proper for identification as positions subject to the Clerks' Agreement.

This claim involves and this Award provides for an interpretation of the Clerks' Agreement for the future and without retroactive application. Effective within 20 days from the date of this Award, the three positions involved in this claim should be classified and rated as positions coming under the Clerks' Agreement. Upon the facts of this case the Board is without authority to establish classifications and rates of pay as covered by claims (b) and (c); therefore, those claims are dismissed.

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 Employee involved in this dispute are respectively carrier and employe 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 claims (a), (b) and (c) shall be disposed of in accordance with the Opinion.

AWARD

Claims disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1945.