

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Lorain, Ohio, when on February 1st, 3rd, 4th, 6th, 8th, 10th, 11th, 13th, and 14th, 1946, it permitted employes not covered by the Clerks' Agreement to perform clerical work covered thereby; and

That Carrier shall now compensate employe Paul Kauffman for one day's pay on each of the dates mentioned at the regular rate of pay of his position.

EMPLOYEES' STATEMENT OF FACTS: Because of the steel strike at Lorain, Ohio, operations of the Lake Terminal Railroad on the days in question were considerably reduced and many clerical positions were abolished entirely. During the days in question, there was clerical work to be performed intermittently during the entire tour of duty, the clerical work, being performed by the yardmaster, an employe holding no rights under the Clerks' Agreement. On the days in question the yardmaster performed the writing and calculating incident to keeping records and accounts in connection with cars switched, took orders for cars and handled telephone calls, usually performed by the clerk whose position had been abolished.

POSITION OF EMPLOYEES: There is in effect between the parties an agreement bearing effective date of February 1, 1945, which contains the following rules:

Rule 1 (Scope) reads as follows:

"These rules shall constitute an agreement between The Lake Terminal Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and shall govern the wages, hours of service and working conditions of the following employes of The Lake Terminal Railroad Company at Lorain, Ohio, subject to such modifications as are indicated herein.

Employes Affected

"CLERKS, being those employes who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work, and to the operation of

on the second and third tricks. Under normal operations we would have an average of 35 crews daily, therefore, we naturally reduced the force commensurate with the work to be performed. On January 21st, 22nd, 23rd, 24th, 26th, 27th, 28th and 30th, 1946, on which dates a crew worked on the second trick, Claimant Paul Kauffman was called to perform the duties of a Yard Dispatcher, but after January 30th, 1946, was not called.

POSITION OF CARRIER: The position of claimant was stated by the Local Chairman as follows:

"Rule No. 1 of the Clerks Agreement states—Clerks being those employes who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work." It is our position that under this rule the employee would have to do four (4) or more hours of clerical work per day in order to be classed as a clerk. In view of the particular wording of this rule it is evident it was recognized by both parties to the agreement there would be cases where an employee would perform more than one class of work but would be classed in accordance with the preponderance of the duties performed by him and unless the employee performed four (4) or more hours of clerical work daily it was not the intention to class such an employee as a clerk and he would remain without the scope of the Clerks' Agreement. The yardmaster on duty at the time was the employee who did the work which the claimant claims should have been performed by him, but since the yardmaster did much less than four (4) hours of such work daily, he could not properly be classed as a clerk. Further, even under normal operations it is necessary that a yardmaster perform a certain amount of clerical work in the performance of his regular duties.

We respectfully direct your attention to the fact that we had no one working on the second trick, February 14th, 1946, and therefore the claimant could not have a claim on this date under any circumstances.

For the foregoing reasons, the Carrier submits that the claim should be denied.

OPINION OF BOARD: The National Tube Company is the largest industry located on this Carrier. On the days involved in this claim, the employes of this company were on strike and the operations of the Carrier were greatly reduced. This resulted in many clerks being furloughed as a result of the ensuing force reduction. Claimant was the senior clerk thus furloughed. On January 21, 22, 23, 26, 27, 28 and 30, 1946, dates on which a switch crew worked on the second trick, Claimant was called to perform the duties of a Yard Dispatcher. After January 30, 1946, and on the days set out in the claim he was not called and the clerical work was performed by a Yardmaster.

It appears also that an agreement was made by which it was understood that if there was any clerical work to be performed, the senior furloughed clerk would be called upon to perform it. We think this means that Claimant was to perform the clerical work in question and that Carrier violated the understanding in permitting a Yardmaster to perform it. Unless this be true, no occasion existed for making the agreement. The claim appears to have been progressed on the theory that unless clerical work of four hours duration existed that it was not necessary to be performed by clerks. This not being necessarily so, the understanding that the senior furloughed clerk would be called to perform any clerical work is sufficient to sustain the claim.

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 Agreement was violated by the Carrier as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of March, 1947.