

Award No. 3654

Docket No. CL-3586

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Agreement:

(1) When they assign Gatemen Group 2 Employees to perform the clerical work of Group No. 1 Employees in keeping payroll records in the Stationmaster's Department without proper compensation.

(2) That Gatemen Ethan French, Wm. E. Runge, Ray R. Romer, Ed Dodson, and others be compensated for the difference in their rate of pay as gatemen and clerk's pay in the Stationmaster's office from February 14, 1946, for the time used in this capacity until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Carrier has for some time been using Gatemen (Group No. 2 Employees) in the capacity of Clerks (Group No. 1 Employees), while on their spare time, without properly compensating them for performing this higher rated work. Under date of February 14, 1946, Local Chairman H. A. Ferguson wrote to Mr. H. F. O'Neill, Stationmaster, protesting this action and we submit copy of this letter as Employees' Exhibit "A," and copy of Mr. O'Neill's reply of February 2, 1946, as Employees' Exhibit "B." We submit copy of Mr. Ferguson's letter of February 22, 1946, as Employees' Exhibit "C" and Mr. O'Neill's reply of March 1, 1946, as Employees' Exhibit "D."

Under date of March 14, 1946, we wrote Mr. Henry Miller, Jr., Superintendent, and show copy of this letter as Employees' Exhibit "E" and his reply of March 15, 1946, is shown as Employees' Exhibit "F," in which he refers to an agreement made in 1936 in the form of a letter written September 11, 1936, by Mr. J. A. Mathewson, General Superintendent, to Mr. H. R. Lyons, Vice Grand President of the Brotherhood of Railway Clerks, and Mr. Lyons firmly states that nothing in this letter or during the negotiations dealing with the elimination of split shifts permits the Carrier to use these gatemen on higher rated positions or work without proper compensation. Copy of the 1936 letter referred to by Mr. Miller is attached as Employees' Exhibit "G."

We again wrote Mr. Miller under date of March 2, 1946, and submit this letter as Employees' Exhibit "H" and his reply of March 27, 1946, as Employees' Exhibit "I."

Under date of March 29, 1946, we wrote to Mr. J. A. Wicks, Director of Personnel, and submit this letter as Employees' Exhibit "J," and his reply of April 4, 1946, as Employees' Exhibit "K."

men in question, they have never contested our statements to that effect. In this connection, note specifically the second paragraph of Superintendent Miller's letter of March 15, 1946, to General Chairman Schmidt (Exhibit 1), and the second paragraph of my letter of April 4, 1946, to General Chairman Schmidt (Exhibit 2). As indicated above, neither of those statements was challenged by the General Chairman.

If clerical work doesn't have to be assigned to clerks until it reaches the proportions outlined in Rule 3, i.e., "not less than four hours per day regularly," it certainly doesn't have to be compensated for at clerical rates. In other words, until clerical work reaches the proportions specified, it is not "higher rated work" as contemplated in Rule 48. The performance of clerical work by any Group 2 employe does not constitute the performance of "higher rated work" as contemplated by the rule, unless and until it reaches the proportions specified. Until it does reach such proportions, there is no basis under the Agreement on which to predicate payment of the clerical rate. It is logical to arrive at this conclusion on basis of the quoted statements from Awards 2011, 236, 458 and 806. As a matter of fact, in one of the awards the Board specifically states that when work dwindles to less than half a man's time, it can be absorbed by lower rated employes. If clerical work from a regularly established position can be absorbed by Groups 2 and 3 employes without the payment of the clerical rate, it stands to reason that clerical work can be performed by any Group 2 or 3 employe at the established rate of pay of their position until it reaches the proportions definitely established in Rule 3.

In the instant case the gatemen in question are neither assigned to higher rated positions (there are no clerical positions involved as the work in question has never been performed by employes classified as clerks) nor to higher rated work because the clerical work to which they are assigned during their spare time as gatemen is not sufficient proportions (specifically designated in Rule 3) to warrant performance by an employe rated and paid as a clerk.

OPINION OF BOARD: The dispute before us apparently had its genesis in a change from a split-shift to a straight 8-hour shift for some of the gatemen at the terminal in 1936. The gate duties at the terminal are heaviest at three different and separated periods of each day. Before the change in 1936 some of the gatemen worked a split-shift to take care of these peak load periods. In agreeing to put all gatemen on a straight shift, J. A. Mathewson, then General Superintendent, said in a letter dated September 11, 1936, to H. R. Lyons, then Vice Grand President, that the change was being made "with the specific understanding that we will be privileged to use the men in any capacity around the station during their spare time." There is no evidence that the Organization refused to recognize this letter as a supplement to the then existing agreement of February 1, 1922.

Gatemen were given various duties other than their primary duties at the gates, and the Organization has not challenged these assignments in so far as they antedated the current agreement dated April 1, 1945. (In fact, owing to this background, the Organization makes no claim antedating the date of filing, February 14, 1946.) Included in the current agreement is a rule (Rule 2) which states that the rules contained in the new agreement "shall supersede and be substituted for all agreements, practices and working conditions in conflict herewith." The Organization correctly contends, therefore, that in so far as Mr. Mathewson's letter of September 11, 1936, conflicts with the rules of the current agreement, it is null and void.

The same can be said of the Memorandum Agreement of January 15, 1943, which dealt with the use of gatemen in the Train Information Bureau, although the Organization has made no issue of this service in these claims. The carrier brought up the matter of the 1943 Memorandum Agreement as an illustration of how it was using gatemen for other than their primary duties.

With this background the Board can proceed to weigh the duties of the gatemen involved against the agreement, to determine whether the violation claims have merit.

The rules involved, according to the Organization, are those numbered 1, 3 and 48, all of which, or their approximate equivalents, have been interpreted and reinterpreted by this Board many times in cases brought against other carriers.

Rule 1 is the "scope rule," dividing clerks into three classes or groups. Rule 3 is the "qualification rule," providing with exceptions that employees who devote four hours or more a day to clerical work shall be classified as clerks, i.e., in Group 1 under Rule 1. Rule 48 provides for preservation of the higher rate when an employee is assigned to either a higher or a lower paid job.

When this case first came before this Board, owing to a cloudy record on just who was involved and just what the exact time and nature of the violations were, the parties agreed to a joint spot-check at agreed dates. This joint-check disclosed that the claims could be divided into two categories:

(1) Those involving Gatemen William Runge, Ray Trueman, Ray Ramer and Ed Dodson and whoever else was required to perform similar duties in the station master's office during the period covered by the claims.

(2) That involving Gatemen Ethan French (or any substitute) whose claim was based upon his duties in the chief janitor's office.

We will consider them in order. First, the check on the activities in the stationmaster's office showed that Runge spent 22 minutes on duty there that day, away from his primary duty as a gateman. During those 22 minutes he answered the telephone once, getting a sick report from an usher. Trueman spent 59 minutes on duty in the stationmaster's office. He made a loud speaker call for a sightseeing bus driver. Ramer was by far the most active in his 1 hour and 10 minutes. He answered the phone three times, called a janitor on the loud speaker and spent 25 minutes cleaning out the consist file. Ramer's activity the day of the check coincides with other somewhat nebulous testimony that Gateman Ramer was carrying most of the load of whatever "clerical" duties were performed by gatemen in the stationmaster's office. We quote the final paragraph of the letter from the Carrier to the Organization, dated September 27, 1946, outlining the duties of the claimants as the Carrier saw them:

"Roy E. Ramer has been devoting about 6 hours per day in the stationmaster's office, the time being about evenly divided between answering the telephone, supplying information and making announcements over the public address system. These duties, while at times performed by clerks, are not duties accruing solely to clerks; furthermore, gatemen regularly supply information to passengers as a part of their assigned duties. Ramer does not participate in performing strictly clerical work such as maintaining records, making reports, etc."

As can readily be seen, the Carrier stated that Gateman Ramer had been spending about six hours a day in the stationmaster's office, his time divided between the telephone and the loud speaker. The Carrier then proceeds to give circumstantial evidence to the contrary:

"However, as a result of this check we find that since the handling and accounting of receipts turned in by conductors, etc., has been returned to the ticket office, there is very little need for Ramer to be in the stationmaster's office and time thus spent by him will be very negligible in the future."

Be that as it may, this Board finds no substantial evidence that Ramer or any of the other claimants in the same category were required to spend any considerable time in the stationmaster's office at work which is indicated in the tables of positions in Group 1 of Rule 1. Ramer's is the only case about which there can be any doubt, and, as noted above, the evidence in his support is entirely circumstantial. We see no violation of Rules 1, 3 or 48 of the claims involving Runge, Ramer, Rodson and others involved in this case. They have been required to stand by to lend a hand, if necessary, answering the phone, etc., in their otherwise idle time. If this involved work properly belonging to others, the Board might find differently. There is no substantial evidence that their odd jobs deprived any one else of any work in any way militated against the preservation of a wage structure.

Gateman French's claim has an altogether different basis. The record shows that during two periods of each month, regularly, Gateman French spent a considerable part of his time in payroll work, clearly "clerical" in nature—certainly not Group 2 or Group 3 work as indicated by the titles of the positions in those groups. The above mentioned joint spot-check showed that Gateman French spent the following time on payroll work:

January 31, 1947	2:45	February 5, 1947	:40
February 2, "	4:30	February 6, "	:15
February 3, "	3:45	February 7, "	:45
February 1, "	4:10	February 8, "	:18

The Carrier contends that under Rule 3, as interpreted by this Board, does not require payment of Group 1 rates to Group 2 or 3 employees unless the latter regularly devote four or more hours daily to Group 1 work. We agree with the Carrier's contention in this case to the extent of holding that Gateman French's position need not be reclassified from Group 2 to Group 1. However, Rule 48 provides that "employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rate while occupying such positions or performing such work. . . ." This appears to the Board to be clearly applicable to Gateman French's case. He was "regularly" assigned to "higher rated . . . work" and should be compensated accordingly for those hours when he performed it. The fact that working on payrolls always was a part of Gateman French's (or a predecessor's) duties is an argument without merit in the light of the clear, unqualified working of Rule 48.

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 violated Rule 48 of the Agreement to the extent indicated in the Opinion.

AWARD

Claim sustained as regards Gateman Ethan French (or his substitute); denied in other respects.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1947.