

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:—H. E. Hardy and J. E. Danacker, Clerks, Transfer Yard, Indianapolis, Indiana, be paid three hours and five hours pay respectfully, at the rate of time and one-half beginning July 12, 1946, and all subsequent dates because of the assignment of clerical work to Yard Masters when these employees were available. (Docket W-446)

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act. This Rules Agreement will be considered as a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimants are employed as clerks at the Transfer Yard, Indianapolis, Indiana, which the Carrier operates on a continuous twenty-four hour basis.

Prior to July 14, 1946, a force was maintained at the Transfer Yard, Indianapolis, as follows:—

	Symbol No.	Tour of Duty	Rate
1 Yard Master		7:00 A.M. to 3:30 P.M.	
1 Clerk	B-29-G	7:00 A.M. to 3:30 P.M.	\$235.70
1 Yard Master		3:30 P.M. to 11:30 P.M.	
1 Clerk	B-65-G	3:00 P.M. to 11:00 P.M.	238.70
1 Yard Master		11:30 P.M. to 7:30 A.M.	
1 Clerk	B-66-G	11:00 P.M. to 7:00 A.M.	231.70

Effective July 14, 1946, position Symbol B-66-G was abolished. Effective same date, the tour of duty of position Symbol B-65-G was changed to 6:00 P.M. to 2:00 P.M., the remaining force being as follows:—

	Symbol No.	Tour of Duty	Rate
1 Yard Master		7:30 A.M. to 3:30 P.M.	
1 Clerk	B-29-G	7:00 A.M. to 3:00 P.M.	\$235.70
1 Yard Master		3:30 P.M. to 11:30 P.M.	
1 Clerk	B-65-G	6:00 P.M. to 2:00 A.M.	238.70
1 Yard Master		11:30 P.M. to 7:30 A.M.	

tion of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION: The Carrier has shown that under the applicable Agreement between the parties to this dispute that in abolishing clerical position B-66, and rearranging its clerical assignments at Transfer Yard, Indianapolis, Indiana, it complied with the provisions of the applicable Agreement, and that the subsequent performance by the Yard Masters at Transfer Yard in the periods when there was no clerk on duty, of the work in question, was incidental to the performance of their supervisory duties as such, was not work which accrued exclusively to the clerical forces, of which craft the Claimants were members, and therefore, no violation of the Agreement occurred.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Claimants are clerks in the Transfer Yard at Indianapolis which is operated on a continuous twenty-four hour basis. Prior to July 14, 1946, three yardmasters and three clerks were regularly employed there around the clock. On that date one of the clerk's positions was abolished leaving three yardmasters and two clerks with no clerk on duty between 3:00 P.M. and 6:00 P.M., and between 2:00 A.M. and 7:00 A.M. During those hours the necessary clerical work was performed by the yardmaster on duty, and this claim resulted.

Both parties rely on Rule 3-C-2 (a) of the agreement which reads:

"3-C-2. (a) When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed.

(2) In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, Foreman, or other supervisory employe, provided that less than 4 hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other Supervisory Employe.

(3) Work incident to and directly attached to the primary duties of another class or craft such as preparation of time cards, rendering statements, or reports in connection with performance of duty, tickets collected, cars carried in trains, and cars inspected or duties of a similar character, may be performed by employes of such other craft or class.

(4) Performance of work by employes other than those covered by Agreement in accordance with paragraphs (2) and (3) of this Rule (3-C-2) will not constitute a violation of any provision of this Agreement."

Carrier argues that it was authorized to assign clerical work of the abolished clerk's position to the yardmasters because the time consumed by each

of the yardmasters in doing such work did not exceed two hours per day, and that Rule 3-C-2 (a) (2) permits assigning such work to a yardmaster provided that less than four hours' work per day of the abolished position remains to be performed.

However, Carrier overlooks the provision in that same sub-paragraph (2) that such work may be assigned to a yardmaster only in the event there is no clerk's position remaining in existence at the location where the work is performed. In this case we have two clerk's positions at such location still existing. And under sub-paragraph (1) Carrier is required to assign the work of the abolished position to other existing positions under the agreement remaining at the location where the work is to be performed.

It is a well established rule of construction that all related provisions of an agreement must be read together, and when we do this with Rule 3-C-2 (a) it is plain that sub-paragraphs 1, 2, 3, and 4 of (a) are not independent rules of the agreement but are interdependent, and all relate back to (a) and apply only when the conditions provided in (a) occur. See Award 3583.

Under the clear and plain terms of Rule 3-C-2 the claim must be sustained. But the amount recoverable under the claim is not satisfactorily established by the record. Claimants argue that an eight-hour position was abolished so that recovery should be had for eight hours, three for one claimant, five for the other. But claimants, although strict proof was called for, do not show how many hours of clerical work was actually performed by the yardmasters. Carrier asserts not more than 2 hours per day by each of two yardmasters was devoted to clerical work. Claimants do not dispute this. Under Rule 4-A-6 (a) if claimants had each performed two hours of this work between their regular work periods and not continuous therewith, they would each be entitled to a minimum of three hours at the pro rata rate. Such will be our award.

FINDING: 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 Carrier violated the agreement.

AWARD

Claim sustained for three hours per day at pro rata for each claimant, in conformity with the opinion, from July 14, 1946.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1948.

DISSENT TO AWARD 3870, DOCKET CL-3908

This Award mistakenly conceives that Rule 3-C-2 deals with work that may not be and, as here, is not work belonging exclusively to Clerks. The rule was not designed to restrictively cover the performance of work which does not belong exclusively to Clerks under the scope provisions of their Agreement.

The Scope Rule does not include as a monopoly work that may be of a character assignable to and performed by Clerks but also is work inherent in the duties of a Yardmaster, as here, and of other classes of employes.

Sound analysis of Rule 3-C-2 shows that its whole intent was based upon full recognition of the limitations inherent in the Scope Rule. Rule 3-C-2 contains its further express limitations definitely applicable under conditions which admitted of assignment to clerks of duties remaining from abolished positions if other clerks remained at the location and conditions permitted their performing the remaining work. But if impracticable for such other clerks to assume the remaining duties and they were of a character incident to the duties of employes of other classes, including Yardmasters, who could assume them, such assumption by employes of other classes does not infringe upon the complete purpose of the Agreement.

The Award gives legalistic application of Rule 3-C-2 impractically restrictive upon the Carrier, one party to the Agreement, whose intent could not reasonably ever have been in accord with the interpretation given by this Award.

/s/ C. C. Cook
/s/ A. H. Jones
/s/ R. H. Allison
/s/ R. F. Ray
/s/ C. P. Dugan