

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 J. P. Glazier, Clerk, Hawthorne Yard, be paid eight hours pay at the rate of time and one-half for clerical work assigned to J. W. Gollmier, Yard Conductor, from June 11th to September 5th, 1944, in violation of the Scope of the Agreement. (Docket W-358.)

EMPLOYEES' 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 Claimant, J. P. Glazier, Clerk, is regularly assigned to position, Symbol B-20-G, Yard Office, Hawthorne Yard, tour of duty, 7:30 A. M. to 3:30 P. M., relief day Sunday.

Conductor J. W. Gollmier, assigned to Yard Crew working daily 3:30 P. M. to 11:30 P. M. within the Indianapolis Terminal performing yard and industry switching, switched cars daily from the International Harvester Company Plant, an industry located on Pennsylvania Railroad rails within the Indianapolis Terminal.

The cars pulled from the International Harvester Company were placed in Track 105, known as a set-over track for cars to be classified; the cars placed in this track are kept listed up to date. These lists are prepared from a track check made by the Clerks on forms known as CT-362.

In the instant case, and on the dates involved in this claim, Conductor J. W. Gollmier prepared a list of cars on Track 105 daily, instead of a Clerk to whom this work accrues.

POSITION OF EMPLOYES: The question at issue in this case is whether or not the carrier has violated the Scope of the Clerks' Rules Agreement in assigning the clerical work of making track checks and listing the cars thereon on forms provided for that purpose, to a Yard Conductor which position is not covered by the Scope of the Clerks' Rules Agreement, and if so, is a claim for pay payable to an available qualified clerical employee who has seniority rights to such work.

entitled to be called for the service in question, and, therefore, is not entitled to any additional compensation in any amount on June 11, 1944, and subsequent dates.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement Between the Parties and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application 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 Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement 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 Conductor Gollmier in furnishing the Carrier with a list of the cars that his crew moved from the plant of the International Harvester Company to Hawthorne classification Yard, Indianapolis, Indiana, performed service which may properly be required of him incidental to his supervisory duties as a conductor; and that the performance of such service did not constitute a violation of the applicable Agreement.

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

OPINION OF BOARD: The controversy here turns on whether a conductor assigned to a Yard Crew at the Indianapolis Terminal performed work covered by the Clerks' Agreement. In doing yard and industry switching the crew switched cars daily from the International Harvester Company Plant and placed them on a set-over track for classification. The conductor was required to prepare a list of the cars his crew placed on such track, indicating the initial and number of each car and whether loaded or empty, and deliver it to the Yardmaster. Customarily the cars placed on the set-over track are kept listed up to date from a track check made by the clerks. It is clear the conductor was making a track check and thus performing clerks' work.

The work of checking tracks and the listing of cars thereon has been recognized as clerks' work at the same location and at other places on Carrier's lines.

Carrier argues that such work was incidental to the conductor's regular duties and that he had a right to perform it under Rule 3-C-2 which reads in part:

"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 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 this 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 relies chiefly on sub-paragraph (3). But that sub-paragraph is not an independent rule of the Agreement. It is an interdependent provision of 3-C-2 (a) and relates back to (a) and must be construed with (a). Since (a) requires the abolishment of a position as a condition precedent to the operation of sub-paragraphs 1, 2, 3, and 4, and since no position was abolished here, subparagraph 3 has no application, and the claim must be sustained.

The amount of time the conductor spent daily in performing such clerical work is not shown in the record. Under the circumstances, the claim will be allowed for a call only, or for three hours at the pro rata rate under Rule 4-A-6 (a).

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 Carrier violated the Agreement.

AWARD

Claim sustained for three hours per day at the pro rata rate in conformity with the Opinion.

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 3871, DOCKET CL-3909

The facts in this case are that the yard conductor, incident to switching and handling outbound cars from the International Harvester Plant at Indianapolis, prepared a list of the cars his crew moved from the plant, all of which cars were placed on a set-over track in the classification yard. A list of cars on the set-over track is maintained daily by yard clerks who keep the list up to date by adding to the list from information furnished by the yard conductor as to the cars placed thereon each day. This list is then used for classification purposes in switching the cars on that track and thereafter becomes a permanent record. The list as prepared by the conductor is discarded.

The Opinion of Board states that the Carrier relies chiefly on sub-paragraph (3) of Rule 3-C-2 but, setting it aside as having no application, the Award declares that the claim must be sustained, ostensibly because of the statement in the first paragraph of the Opinion that "It is clear the conductor was making a track check and thus performing Clerks' work."

The facts are, however, that this conductor's list was a list of cars which he was moving into the yards and was not a track check.

This leaves the Award to be a holding that the Clerks' Agreement was violated when a yard conductor took record of the cars which he was handling from an industrial plant into the yards and turned that record over to the Yardmaster. To declare that such duties incidental to the work of a yard conductor are duties exclusively reserved to the clerks by the scope of their agreement is to give to the Scope Rule of the Clerks' Agreement an unintended coverage.

The Award is in error.

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