

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee.

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When it abolished Second Trick Yard Clerk position, hours 4:00 P. M. to 12:00 Midnight, occupied by Clerk R. C. Abbott, at Huntington, Indiana, and assigned the duties thereof to the General Yardmaster and Yardmaster, employees not covered by the Clerks' Agreement, and

(2) That Carrier shall now re-establish position of Second Trick Yard Clerk, hours 4:00 P. M. to 12:00 Midnight, and restore employee R. C. Abbott to said position, and

(3) That Clerk Abbott be compensated at Yardmaster's rate of pay for two (2) hours each day retroactive to January 20, 1946, account performing Yardmaster's duties during the hours, 5:00 A. M. to 7:00 A. M. when there is no Yardmaster on duty, and

(4) That Clerk P. E. Swartz be compensated at Yardmaster's rate of pay for one (1) hour each day, retroactive to January 20, 1946, account performing Yardmaster's duties 7:00 A. M. to 8:00 A. M. when there is no Yardmaster on duty, and

(5) That Clerk Geo. C. Kline be reimbursed the difference between Yard Clerk's rate and rate of his present position of Roundhouse Clerk amounting to 85¢ per day retroactive to January 20, 1946, account displaced by R. C. Abbott, whose position was abolished and the duties thereof assigned to the General Yardmaster and Yardmaster.

EMPLOYEES' STATEMENT OF FACTS: On January 20, 1946, the position of Second Trick Yard Clerk, hours 4:00 P. M. to 12:00 Midnight, at Huntington, Indiana, occupied by employee R. C. Abbott was abolished and the duties thereof assigned to the General Yardmaster and Yardmaster, the latter's assignment being changed so that thereafter no Yardmaster was on duty between the hours of 5:00 A. M. and 8:00 A. M.

R. C. Abbott, the occupant of the Second Trick Yard Clerk's position, exercised displacement over Kline, Relief Clerk, who in turn exercised his seniority rights to position of Roundhouse Clerk at Huntington, Indiana, resulting in Kline losing 85¢ per day. As a result of the change in the Yardmaster's assignment, employee Swartz is required to assume the Yardmaster's duties during the hours 7:00 A. M. to 8:00 A. M., and employee Abbott is re-

There is no justification for claim of Yard Clerks Swartz and Abbott for Yardmaster rate of pay because there is no rule in Clerks' Agreement that grants such pay. Neither Swartz nor Abbott have responsibility or authority of a Yardmaster when they work as Clerks during period there is no yardmaster working. Employees allege that Clerk Swartz and Abbott were for short periods during their regular hours assigned to a higher rated yardmaster position, and alleged violation of Rule 34 of Agreement, December 1, 1943, amended July 1, 1945. Rule 34 applies only where a clerk is temporarily assigned to a higher rated clerical position within scope of Clerks' Agreement. Yardmasters' positions are not within the scope of said agreement. (See Awards 2133, 2134 and 2679.) Yardmaster rates are negotiated for positions within scope of Yardmasters' Agreement and apply to those who are assigned yardmaster responsibilities and authority. Clerks Swartz and Abbott are not assigned such responsibilities and authority and perform only work that may be assigned to any yard clerk.

These claims filed in Docket CL-3632 have no merit and should be denied.

OPINION OF BOARD: The claim presented contains five items. Three of these represent alleged violations of the controlling Agreement and the other two are incidental thereto.

One alleged violation is that at Huntington, Indiana, the Carrier abolished wrongfully a Second Trick Yard Clerk position and wrongfully assigned the work of the position to Yardmaster.

Another is that Clerk R. C. Abbott was required to perform Yardmaster's work two hours a day and that he is entitled to pay therefor at the Yardmaster's rate retroactively to January 20, 1946.

The third is that Clerk P. E. Swartz was required to perform Yardmaster's work one hour a day and that he is entitled to pay therefor at the Yardmaster's rate retroactively to January 20, 1946.

One of the remaining two or incidental items is a request that the abolished Clerk's positions be restored and the other that there be an adjustment of compensation on account of displacement occasioned by the abolishment of the Clerk's positions.

It appears that in abolishing the Clerk's position there was a violation of the Agreement.

The approach to the matter of abolishing this position, it appears, must be the same as in Award 3877 wherein the right to abolish positions under a rule identical with the appropriate one here was considered.

The question there was one of restoration of incidental clerical duties of a Yardmaster which had been assigned to Clerks.

There, it was said in interpretation of agreement provisions identical with the appropriate provisions of the present Agreement:

"Was there a proper removal? The agreement does not specifically point out how incidental duties of a Yard Master, once removed by placing them under another agreement, may be returned as such, but we think that the method may be found by reference to Rule 3-C-2, the pertinent part of which is the following:

'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 Supervisory employe.'

"The conclusion drawn from this is that in order that former incidental duties of a Yard Master, once withdrawn and assigned to a clerk's position, may not be withdrawn therefrom and returned as incidental duties of a Yard Master unless and until (1) the clerical position wherein the duties are performed is abolished, (2) and not then unless no position under the agreement exists at the location where the abolished position is to be performed, (3) and not then unless the work remaining is less than 4 hours per day and as applied to this docket incident to the work of a Yard Master."

Under this interpretation it follows that the Carrier had the right to abolish the clerical position. If, however, it did so and another or other clerical positions covered by the agreement remained at the place where the work was to be performed it was the duty of the Carrier to assign the remaining work to such position or positions. If, however, there was no other such position or positions, and if less than four hours of work remained, and if such remaining work was in the class of incidental work of a Yard Master, then it could be assigned to a Yard Master.

It is clear that there were other clerical positions at the place where this work was to be performed, therefore it follows that the work of the abolished position could not have been properly assigned to the Yard Master as incidental clerical duties. There was a violation of the Agreement as contended.

The claim in this respect having been made in behalf of Abbott he is entitled to compensation for the time a Yard Master consumed in performance of the work of the abolished position retroactive to January 20, 1946, and to such time as the Carrier did, or shall, properly assign the duties of the abolished position. However, what time has been so consumed by the Yard Master is not ascertainable from the record before the Division. A joint check on the property appears to be necessary in order that the time and amount of compensation to which Abbott is entitled may be ascertained.

We think that the claims based on the contention that Abbott and Swartz were required to perform Yard Masters' work has not been sustained.

A discussion which makes clear this conclusion appears in the Opinion in Award 3907, which discussion we do not think requires repetition here. As in that docket, we conclude that it has not been made to appear sufficiently that the duties which the Organization contends were duties and functions of a Yard Master were not clerical duties outlined by and performed under the direction and supervision of a Yard Master.

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 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 a violation of the Agreement under Item (1) of the claim has been sustained, but that the penalty therefor cannot be ascertained in the absence

of further information as to amount of Clerk's work performed by Yard Master.

Items (2), (3), (4) and (5) have not been sustained.

AWARD

Claim sustained as to Item (1) thereof as per finding, with the right of Clerk Abbott to be paid retroactively to January 20, 1946, for the time a Yard Master consumed in performance of the work of the abolished position, with remand for joint check on the property to ascertain the amount of time so consumed.

As to Items (2), (3), (4) and (5), the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1948.