

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When on January 1, 1947, it removed the work of checking certain industry tracks at Allouez Yards out from under the scope of and operation of the Agreement and assigned it to an employee not covered by the Agreement who holds no seniority rights under it, entitling him to perform said work.

2. That clerical employee Joseph Dzelak, then senior man on extra board who should have been assigned to clerical job December 1, 1946 and who is the claimant employee in another dispute handled independently of this case, be compensated for one call, two hours at time and one-half rate January 1, 1947 and each day thereafter to and including April 7, 1947.

3. That Lawrence T. Duret, the Bill Clerk at Allouez, another employee adversely affected by this violation of the Agreement, be compensated for one call, two hours at time and one-half rate, from April 8 to April 18.

4. J. H. McGrath, Car Checker at Allouez, another employee adversely affected by reason of this violation of the Agreement, be compensated for one call of two hours at time and one-half rate for April 19, 1947 and every day thereafter that this work continued to be performed by an employee not covered by the Agreement.

EMPLOYEES' STATEMENT OF CLAIM: On Jan. 1, 1947, the Carrier deemed it necessary to make a check of certain tracks of what is known as the Creosoting Plant at Allouez, Wis. Records do not show that the Carrier had ever made a systematic check of cars located on the tracks at the Creosoting Plant prior to this date. As stated, on Jan. 1st, instructions were issued that the tracks at the Creosote Plant should be checked in order to apply proper demurrage charges.

There is employed at the Yards at Allouez, at certain times of the year, a Car Checker with a rate of \$8.12 per day. On Jan. 1st, 1947, on account of the ore season not being in operation, the Car Checker's position had been temporarily discontinued. There was, however, maintained at Allouez Yard, a list of names and addresses of certain employees who had been furloughed on account of closing of the ore dock season and their positions were abolished. These employees were on, what is known, as an

of Railroad and Steamship Clerks in this case is without merit and must be denied.

OPINION OF BOARD: The claim is that the Carrier, in violation of the Clerks' Agreement, removed the work of checking certain industry tracks at Allouez Yard, Wisconsin, from the scope and operation of the Agreement, and assigned such work to the station agent at Allouez, an employe not covered by the Agreement, and holding no rights thereunder. Monetary claims are filed on behalf of three employes on the extra list, allegedly entitled to such work during succeeding periods, and during which said work was withheld from them. The defense to the claim is that the work which this station agent did never was, and was not then, clerks' work, although clerical in its character; and that it was work which the station agent could properly be required to do, as incidental to his regular work. In this connection, it should be noted that the station agent did this checking work after the end of his regular tour of duty, which gives rise to the contention of the claimant that, inasmuch as the checking work of the station agent was performed after the end of his regular working hours, and on an overtime basis, it could not be said that it was incidental to his regular assignment.

Allouez Yards, Superior, Wisconsin, is located on Lake Superior, and during the open season is a very busy shipping point. Iron ore is loaded and shipped, and coal received, unloaded and distributed. During the winter months, however, there is little activity, and that confined almost entirely to shipments of coal which had accumulated during the summer season. But there was located at that point, and in the same yard limits, an industry called Creosote Treating Plant, located on a separate track, and located some two miles from the office of the agent and yardmaster. Ordinarily, and up to around January 1, 1947, the track leading to the Creosote Plant was checked once a week by the agent, or by a switch foreman, usually by the latter; but on January 1, 1947, such checking was required daily, in connection with imposition of demurrage, due to a car shortage, and the station agent was given this work. Petitioner says that at the date said work was so assigned to the station agent, the claimants were clerks on the extra list provided for in Rule 18 (b) of the Agreement, and entitled to do such work. Rule 18 (b) provides that an extra list shall be maintained in connection with each seniority district roster; that employes on such list, not already at work, will be called for service for which they are qualified, and in accordance with their seniority; that when they complete the work for which they are called they shall be returned to the extra list; and they must keep the Carrier advised of their location and address, and for avoidance or refusal of a call are subject to investigation and discipline.

As we understand the position of the Carrier, it is, that while the work the station agent did in checking the track leading to the Creosote Plant was clerical work, that did not necessarily bring it within the Clerks' Agreement; that it was incidental to his employment under the Telegraphers' Agreement; that it was work that had always been performed by the agent, or by a switch foreman, and had never been performed by clerks; and, therefore, in following the practice of former years, though enlarging it from weekly to daily checks, there was no violation of the Clerks' Agreement.

There have been many awards on questions closely related to the Carrier's contention, and we cannot undertake to deal with all of them. Award No. 615 was on a claim that the Carrier violated the Clerks' Agreement "by assigning clerical and other station work to an employe not covered by said agreement, and failing and refusing to assign such clerical and other station work to employes holding seniority rights thereto" which, as will be noted, is the claim here made. The substance of this award was to hold that the terms of the Clerks' Agreement did not assure to clerks all clerical work; that telegraphers and other types of employes, as incidental to their work, were generally called upon to do some clerical work, and their doing so did not constitute a violation of the Agreement. Many other awards of this Division sustain this holding. See Awards Nos. 806, 1418, 1694, 1849, 2551, 2674, 3211. We think this principle has been firmly established by this Division.

But in Award No. 636 of this Division, written for the Board by the same referee who wrote Award 615, it was said:

"The practice there referred to as being abundantly proven and a matter of common knowledge was the assignment of clerical work, existing or arising immediately adjacent to the post of the telegrapher, to him. There was no shadow of proof or of thought in that case that a telegrapher may be detached from his post and sent a mile away to an entirely unrelated location to take over a half a day of straight clerical work to facilitate the abolition of a clerical position * * *."

It is clear, therefore, that while the principle laid down in Award No. 615, and the subsequent awards cited, is firmly established, it is subject to limitations well illustrated in Award No. 636.

While an employe may do clerical work incident to his regular assignment, such work should be strictly confined thereto, and should not be permitted when done outside of, and in addition to, his regular work. The rule established is a necessary one, because there is some clerical work in almost every line of employment, and being necessary, should not be abused. The weekly check on the track leading to the Creosote Plant, involving work outside of the station agent's office, can hardly be said to be incidental to his regular job, but if done by a switch foreman, might be so classified. However, when the Carrier set up a system of daily inspections, it became a regular and separate job, and, being clerks' work, should have been assigned to a clerk. When the Carrier assigned this work to the agent, it violated the Clerks' Agreement. The fact that the agent did this work after the end of his regular tour of duty, and on an overtime basis, only magnifies the violation. He should not have been assigned this work, even if it was to be performed within the hours covered by his regular assignment, for it would have been an undue expansion of the rule that station agent may do clerical work in line with his regular assignment, but not beyond the scope of such assignment.

It follows that the Finding will be that the Clerk's Agreement was violated, and that claimants are entitled to be compensated on a call basis, at overtime rate, for time lost by reason of such violation.

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 the Carrier violated the Clerks' Agreement as charged by the Petitioner.

AWARD

Claims (1, 2, 3 and 4) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary.

Dated at Chicago, Illinois, this 15th day of July, 1948.