

Award No. 4025

Docket No. CL-3971

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the carrier violates the rules of the Clerks' Agreement at Croxton, New Jersey, when it permits and requires the Yardmaster at that location to perform clerical work, and

That carrier shall compensate employe H. J. Farley at rate of time and one-half for May 19th and May 30th, 1946, on which dates Yardmaster Cole performed clerical work ordinarily performed by Yard Clerk Farley during the regular hours of his assignment, Monday to Saturday, inclusive, and

That the carrier shall compensate employe Farley at time and one-half rate for any and all subsequent Sundays or Holidays when Yardmasters performed this clerical work at Croxton Yard, Croxton, New Jersey.

EMPLOYEE'S STATEMENT OF FACTS: Employe Farley is a regularly assigned Yard Clerk at the Box Car Yard Office, Croxton, New Jersey, hours 6:00 A. M. to 2:30 P. M. with a thirty minute lunch period, this position working Monday to Saturday, inclusive, no relief being furnished on Sundays. This office is located at the West End of the Croxton Yard where westbound trains are dispatched. These trains are made up from drags coming from Croxton Transfer, Jersey City, Jersey City Yards, various industries, and from connecting lines. In making up these trains a Yard Checker takes the car number of these drags which are in various tracks, brings the numbers to the Yard Office where a switching list is prepared so that the cars can be worked out or switched. Under this system it is impossible for a train to be made up until the list is made out as there is no prior information at this office as to what the drags contain. This work is performed Monday to Saturday, inclusive, by Yard Clerk Farley, Sunday position compares favorably with week days although Sunday position is somewhat lighter than the week days. During the war this position worked seven days per week.

On Sundays, May 19th and 30th, 1946, because of less traffic, employe Farley was not used on those dates. Instead a portion of the work that he would have performed on Sunday was assigned to and performed by Supervisory Clerk H. Weber. In addition Yardmaster Cole was required and permitted to go out and check cars of the drags which were on various tracks bringing the numbers to the Yard Office where a switching list was

2. When Yard Clerk Farley is notified to work on Sunday it is extra work and he is paid accordingly under Rule 25(c).
3. Prior to the war, Yard Clerk Farley did not work on Sundays.
4. During the war, Farley frequently worked extra on Sunday because of the expanded amount of work to be done. For all such extra Sunday work he was paid penalty rate under Rule 25(c).
5. The position was not changed from a six day to seven day position and Carrier did not include this position in a regular relief schedule of seven day positions under Rule 30.
6. Yard Clerk Farley was **not** and could **not**, under the Agreement Rules, be **assigned to work seven days**.
7. This claim is an attempt on the part of the Employees to have this Board establish a seven day position in place of an already established six day position where there is no necessity therefor.

OPINION OF BOARD: Claimant Farley is a regularly assigned yard clerk at Croxton, New Jersey. He has a six-day position, Monday through Saturday, located at the Box Car Yard Office. He is required to check the car numbers of the drags coming from Croxton Transfer, Jersey City Yards, connecting lines, and various industries. In making up trains from these drags the switch lists must be prepared from Farley's check.

Farley was not called to work on Sunday, May 19, 1946, or on Decoration Day, 1946, because traffic was light. He asserts that Yardmaster Cole was required to perform on those days the car checking work usually done by him for the purpose of making up the trains. Since Yardmaster Cole is not included under the Agreement, Carrier may not assign Clerks' work to him as that would remove it from the scope of the Agreement.

The record is not as complete as it should be as to the details of the work performed by the Yardmaster, and Carrier attempts to deny the charge that the Yardmaster improperly performed work belonging to the Clerks. But its denial is not categorical. It merely denies that Yardmaster Cole performed "any work on Sunday that is **exclusively** Yard Clerk Farley's on other days." (Our emphasis.) It then states that clerical work at this yard cannot be assigned exclusively to the same yard clerk every day. So it does not really deny that Yardmaster Cole performed the work on the days in question which Claimant usually performs on week days. And it does not deny that Yardmaster Cole performed work belonging to the Clerks.

The record is also indefinite about the time actually spent by Yardmaster Cole in doing such Clerks' work. But it shows that Yardmaster Cole did not do all of it but was assisted by a Clerk. Under these circumstances Claimant has failed to prove he is entitled to a full day's pay. We believe a call under Rule 25 (c) would be adequate.

To discuss other questions which have been raised by Claimant would take us beyond the limits of the claim as it is stated.

Accordingly, the claim is sustained but only for a call for each day such work was performed by Yardmaster Cole or by other Yardmasters.

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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1948.