

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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:

- (1) The carrier violated the rules of the Clerks' Agreement at Youngstown, Ohio, when it abolished the performance of work on a Roster "A" position classified as necessary to continuous operation of the carrier on Sundays and assigned the Sunday work to an employe holding seniority on the Roster "B" Platform Forces.
- (2) That the carrier shall reestablish position of Yard Clerk at Valley Street Yard, Youngstown, Ohio, as a seven (7) day Roster "A" position and reimburse employe John Qualey and W. P. McFadden for eight (8) hours at time and one-half rate for each Sunday and holiday retroactive to July 14, 1946.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 20, 1946, the position of Yard Clerk, Roster "A", Valley Street, Youngstown, Ohio, worked seven (7) days per week, eight (8) hours per day and was considered as necessary to the continuous operation of the carrier. Based on available information this position did not work on Sundays or holidays again until about July 14, 1946, when carrier required W. A. Newall, an employe holding no seniority on Roster "A" to perform certain work previously assigned to the Yard Clerk, Valley Street Yard, Youngstown, Ohio. Position was considered as a six (6) day position on and after February 20, 1946.

Mr. Newall is a Stationary Fireman holding all of his seniority on Roster "B", and he works on Sundays. While Mr. Newall is checking the sidings at Youngstown, Mr. E. A. Wilson, Night Janitor is held on overtime and works Mr. Newall's position until he is through checking sidings on Sundays.

The employes attach hereto as their Exhibit "A", copy of joint check made on Sunday, February 2, 1947, clearly outlining the clerical work performed by Mr. Newall on that date and which is indicative of the work performed by him on Sundays retroactive to July 14, 1946.

POSITION OF EMPLOYEES: There is in effect between the parties an agreement bearing an effective date of July 1, 1945, which contains the following rules:

OPINION OF BOARD: Prior to March 29, 1942, the position of Yard Clerk at Valley Street Yard, Youngstown, Ohio, was assigned six days per week, Monday through Saturday. During the war period, the position was assigned seven days per week because the various industries in the yard area were then operating on Sundays and Holidays. After the war period, the industries returned to a 40 hour week and eliminated the need for the Yard Clerk to work on Sundays and Holidays. The position was thereupon restored to a six day assignment as of February 22, 1946.

During the period of the seven day assignment the Yard Clerk checked ventilation and refrigeration on refrigerator cars held at Valley Street Yard on Sundays and Holidays. After the work was reduced to a six day assignment, it was performed by a Stationary Fireman, a Group B employee under the Clerks' Agreement. The Yard Clerk was a Group A employee under the same Agreement. It is the contention of the Organization that the work belonged to Group A employees, that the Yard Clerk's position was necessary to the continuous operation of the Carrier, that it should have been assigned seven days each week, and that the Yard Clerk should be paid 8 hours at the time and one-half rate for each Sunday and Holiday he was denied the work.

In the first place, the record does not show that the Yard Clerk's position was necessary to the continuous operation of the Carrier. While it was assigned on a seven day basis, it was due to industrial work in the yard area and not because it was necessary to the continuous movement of trains.

It appears that the checking of refrigerator cars had been done by Group B employees before the Yard Clerk's position was given a weekly assignment of seven days. When the latter assignment was made, the work was given to the Yard Clerk to save a freight house employee the necessity of travelling to Valley Street Yard to perform approximately one hour's work. When the Yard Clerk's position was reduced to a six day week, it was returned to the employees from whom it had been taken.

It is true that the Yard Clerk had seniority on the Group A roster and that the Stationary Fireman had seniority only on the Group B roster. But an examination of the rule establishing these two rosters classifies positions and not work other than that which is implied by a listing of the positions. Rule 1-(c)-1 provides that when a position is abolished, the remaining work will be assigned to another position covered by the Agreement at the place where the work is to be performed. It will be noted that the word "agreement" and not "Group" or "Roster" is used. This indicates that remaining work may be assigned to employees in the other Group or roster. Rule 1-(f) uses the expression "where remaining work of an abolished position is reassigned to employees within this agreement" indicating that work may be assigned from one Group to the other. Rule 1-(g) provides in substance that when the duties of a position are composed of work of two or more classifications defined in Groups 1 and/or 2, the payroll classification is to be determined by the preponderance of the work assigned. It will be here noted that the rule contemplates that some positions may perform the duties of classifications in both Groups 1 and 2.

Under the circumstances here shown, we do not think the Agreement was violated when this work was assigned to the Stationary Fireman. Prior to March 29, 1942, the Yard Clerk position had been a six day position, Monday through Saturday. From March 29, 1942 until January 20, 1946, the position was worked seven days each week because the industries served were working seven days per week. On January 20, 1946, the position was abolished because of a strike in the steel industry that eliminated the work of the position. On February 22, 1946, more than 30 days later, the position was reestablished as a six day position, Monday through Saturday, for the reason that industrial operations in the area had been reduced to a 40 hour week, thereby eliminating the need for a Yard Clerk on Sundays. It will be noted that after January 20, 1946, when the position was abolished, it was never again bulletined or regularly assigned to perform Sunday Work. In view of what we have heretofore said in this Opinion regarding the rules of the Agreement applicable to Group 1 and 2 employees, we think the one

hour's work here involved can be assigned to a Group 2 employe. It had always been performed by Group 2 employes prior to March 29, 1942, without objection. From September 1, 1945 to July 14, 1946, it was performed by a Group 2 employe when the refrigerator cars were being held at the freight house. No objection was then made to Group 2 employes doing the work although a Yard Clerk was working seven days a week in the Valley Street Yard for a portion of that period. A fair interpretation of the Agreement, supported by the construction placed upon it by the parties themselves in the past, requires a finding that there was no violation of the Agreement. Consequently, no basis for an affirmative award exists.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.