

Award No. 4346
Docket No. CL-4256

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) When effective June 16, 1946 at Henryetta, Okla., it reduced position designated Weighmaster-Clerk from a seven to six day basis and assigned the Sunday work previously attached to said position to employees not covered by the Clerks' Agreement, and

(b) That such Sunday work as is required and attaches to the Weighmaster-Clerk position six days each week Monday through Saturday shall now be restored to said position of Weighmaster-Clerk, and

(c) That J. W. Dale and such other clerical employees as may have occupied the position of Weighmaster-Clerk be compensated for eight hours at time and one-half rate Sunday, June 16, 1946, and each subsequent Sunday when duties attaching to that position, Monday through Saturday, were assigned to and performed by employees not covered by the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The position of Weighmaster-Clerk, Henryetta, Okla. was bulletined as vacancy January 28, 1946 and assigned February 20, 1946 as per Vacancy and Assignment Bulletins quoted below:

"Tulsa, Okla, January 28, 1946

Location	Henryetta
Title	Weighmaster-Clerk
Hours of Service	9A—1P 2P—6P
Assignment	Seven days per week Sunday rest day
Character of Work	Weighing cars, checking yards, handling demurrage, I. C.—per diem and switching reports, re- ceiving and billing and any other duties which may be assigned by agent.
Reason for Bulletin	Vacancy."

involved in the instant claim must be performed exclusively by clerical employees.

The carrier feels that its handling does not infringe upon the rights of any clerical employee and is not in violation of any rule of the Clerks' Agreement, but should the Board determine otherwise, the Carrier feels that relief should not be granted antedating the date specific claim in behalf of Weighmaster Clerk J. W. Dale was first presented to the Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: January 28, 1946, at Henryetta, Oklahoma, the Carrier bulletined a position of Weighmaster-Clerk on a seven-day assignment with Sunday as a rest day. Effective June 16, 1946, the seven-day assignment of the position was reduced to six. (The bulletin advertising the position described the character of the work as "Weighing cars, checking yards, handling demurrage, I. C.-per diem and switching reports, receiving and billing and any other duties which may be assigned by agent.") Employees claim violation of the Agreement effective January 1, 1946, asserting that the work of the position is now assigned to a Telegrapher on Sundays.

In the discussion of this claim on the property, the basis of the Employees grievance appeared to be that only the work of weighing of cars and clerical work incidental thereto was being performed by the Telegrapher on Sundays. This is evidenced by two letters of the General Chairman to Carrier officials which letters appear in the record and are dated September 12, 1947 and September 30, 1947. However, in the statement of claim and brief to this Board, the Employees refer to "duties assigned to the position" and argue that the claim results not only from the work of weighing of cars being performed by employees not covered by the Clerks' Agreement, but includes clerical work in connection with trains picking up or setting out at Henryetta on Sundays which work they assert is regularly and normally performed by the Weighmaster-Clerk on week days. After filing of claim and before deadlocking of this docket a joint check of such work performed on Sundays as was regularly performed by Weighmaster-Clerk on week days was conducted pursuant to order of this Board. That check revealed that there was work, other than weighing of cars and clerical work incidental thereto, such as yard checking, handling switch lists, preparation of consists and symbol reports which was performed by other employees on Sundays and which was more or less regularly assigned to the Weighmaster-Clerk on week days.

Title (1), Section 2, of the Railway Labor Act setting forth its General Purposes, lists as Number (5) "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions," and in enumerating the duties of carriers and employees lists as Second, "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Naturally, this Board in its deliberations should be guided by the expressed policy of the Railway Labor Act and should expect the parties to discharge their respective duties in connection with grievances as outlined therein. Were we to decide this dispute on the basis of the present record, we do not believe that such action would be in harmony with the general purpose of the Act, as set forth in Section 5, for it does not contribute to orderly settlement of disputes to consider a claim based on a grievance which in the course of progress to this Board changes in character from that which has been discussed on the property. Nor, accrediting all good faith to the parties, do we believe we can say their respective duties as outlined in the quoted section of the Act could have been fully discharged when the grievance was not discussed on the property on facts as they now appear and which were developed pursuant to the request of the Board after submission of

claim. Accordingly, we hold that the claim should be remanded to the property for further conference and negotiation. If the parties fail to reach agreement, the claim may be returned to this Board with the record and presentation more fully developed in accordance with the facts as they appear.

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 facts material and relevant to a disposition of this claim were not developed by either of the parties nor considered in conference on the property.

AWARD

Claim remanded as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1949.