

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, 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 violated the Clerks' Agreement at Binghamton, N. Y.

1. When on September 1, 1946 it arbitrarily changed the assignment of the Chief Clerk, a position necessary to continuous operation, from a seven (7) to a six (6) day position and assigned the duties of the Chief Clerk to a lower rated employee whose duties in turn were assigned to another employee still lower rated, and
2. That the Carrier shall restore the position of Chief Clerk to its former status of a seven (7) day position and compensate J. G. Shrauger for wage loss sustained retroactive to September 1, 1946, and
3. That the Carrier shall compensate Employee Leo V. Simmons or C. E. McKinney, Waybill Clerks, at the Chief Clerk rate of pay for each Sunday worked from September 1, 1946 until proper adjustment is made, and
4. That Employee Wm. H. Costello, Checker-Caller shall be compensated at the rate of pay of position of Waybill Clerk each Sunday retroactive to September 1, 1946 until such time as proper adjustment is made, and
5. That Employee W. H. Costello, Checker-Caller shall be compensated for three (3) hours each Sunday at time and one-half rate, retroactive to September 1, 1946, for work performed on his position by the Yardmaster, an employee not covered by the rules of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: James C. Shrauger was awarded position of Chief Clerk to General Yardmaster, a position necessary to continuous operation, March 17, 1936, covered by Bulletin No. 396, rate \$159.00 per month (present rate \$300.14 per month). He worked the position seven (7) days per week until June 20, 1937 when the position was included in a regularly assigned relief position. His relief day was established as Sunday. Effective June 21, 1942, Mr. Shrauger was required to work seven (7) days per week and was paid time and one-half for Sunday service. This position was considered as necessary to the continuous operation of the Carrier. Effective September 1, 1946, Mr. Shrauger's position was changed from a seven (7) day position to a six (6) day position, and he has continued to work the position Monday to Saturday, inclusive.

Prior to September 1, 1946, Mr. Shrauger was required to perform the following work daily including Sundays and holidays:

1. Agreement has not been violated in any respect.
2. Rule 17 gives the Carrier the right to change the number of working days of an assignment.
3. Clerical work required on Sunday at Binghamton, N. Y. is performed by Clerks coming within the scope of the agreement who are assigned to work regularly on Sunday.
4. The First, Second, Third and Fourth Divisions, National Railroad Adjustment Board in various awards have held that bleeding cars is not exclusive work of any classification of employees and may be performed by any class or craft incidental to other duties.
5. Chief Clerk's position is not required by the Carrier on Sundays.
6. This request by the Employees, if sustained, would have the effect of abandoning Rule 17 and would hold that once a seven-day position is established it could not be altered in any manner regardless of the changing conditions or the fact that necessity for such position on a Sunday no longer exists.

Exhibits not reproduced.

OPINION OF BOARD: The Claim is in five parts and actually presents more than one claim.

Parts 1 and 2 relate to the change of the assignment of the Chief Clerk position at Binghamton, N. Y., from a seven day to a six day position. No rule of the agreement prohibits that action of the Carrier. On the contrary Rule 17 indicates that such changes may be made by the Carrier because it provides that employees may exercise their seniority to obtain another position when the assigned days per week of their positions are changed.

The joint studies conducted in October, 1947, and April, 1948, do not show the performance of any work on Sunday which is significant of the position of Chief Clerk. In fact the Organization relies chiefly on the work at the waybill desk from 1:00 to 4:00 P.M. to show that the duties of the position continued to be performed on Sunday. Such duties are obviously those of a Waybill Clerk and are so performed at least 21 hours of each week day. The fact that the Chief Clerk performs such work for three hours on week days, while the Waybill Clerk is out of the office, indicates that at such times he is performing lower rated work incident to running the office and does not indicate that his position is being operated on Sunday. The claim that the Waybill Clerk is exercising some supervision over other clerks on Sunday is without merit because there is no showing that the Carrier either requested or authorized him to do so.

Parts 1 and 2 of the claim must be denied.

Part 3 of the claim seeks compensation for the Waybill Clerks at the Chief Clerk rate for each Sunday. For the reasons stated above that part of the claim must be denied.

Part 4 of the claim seeks compensation for a Checker-Caller at the Waybill Clerk's rate for each Sunday because of his performance of the D. and H. RR interchange checking which is performed by a Waybill Clerk on week days. That work consists of checking cars which is a regular duty of a Checker-Caller and the fact that it is at times performed by a Waybill Clerk does not indicate that it is higher rated work entitling the Checker-Caller to a higher rate for its performance. This part of the claim must be denied.

Part 5 of the claim seeks compensation for a Checker-Caller due to the bleeding and chalking of cars by the Yardmaster while the Checker-Caller is checking the D. and H. interchange. In our Awards Nos. 1708 and 3494, involving the same parties, we held that chalking of cars by a Yardmaster

was not a violation of the Clerks' Agreement. In our Award No. 2175, involving the same parties, we held that "the work of bleeding cars has never been considered as belonging exclusively to any particular class or craft" and that "it may be done by the members of any craft or class provided it is incidental to their regular work." Certainly it is incidental to the work of a Yardmaster. This part of the claim must therefore be denied.

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

The Carrier did not violate the agreement.

AWARD

The Claim (parts 1 to 5 inclusive) is hereby denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.