

Award Number 4613

Docket Number CL-4606

**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 Galion, Ohio:

1. When it removed Roster "A" work from a Roster "A" position and assigned such work to a Roster "B" employe holding no rights to its performance, and
2. That Carrier shall restore the work of checking outlying tracks to position of Chief Clerk from which position it was removed, and
3. That Employe A. W. Bair, Chief Clerk, Galion, Ohio, shall be compensated at time and one-half rate for two hours each day except Saturdays, and the Relief Clerk likewise compensated for two hours each Saturday, retroactive to August 5, 1947, until such time as the violation complained of is corrected.

EMPLOYEES' STATEMENT OF FACTS: On or about August 5, 1947, the Carrier changed the assignment of the Rate and Bill Clerk at Galion, Ohio from 10:45 AM to 7:45 PM to 11:15 AM to 8:15 PM in order to protect Train No. 7. The change in assignment did not allow the Chief Clerk sufficient time in which to check yard tracks and prepare switching lists for the local crew after the Rate and Bill Clerk reported for duty at 11:15 AM. The Agent therefore, in order to eliminate any overtime on the Chief Clerk position assigned the work of checking the yard tracks to a freight handler, which work had previously been performed by and constituted an integral portion of the Chief Clerk's position. The position of Chief Clerk is a Roster "A" position necessary to the continuous operation of the railroad, and the seniority of the Chief Clerk is confined to seniority district Roster "A" of the Kent Division. The freight handler's position is a Roster "B" position, and the seniority of the freight handler is confined to seniority district Roster "B" of the Kent Division.

POSITION OF EMPLOYEES: There is in effect between the parties an agreement bearing effective date of December 1, 1943, amended July 1, 1945, which contains the following rules:

Rule 1—Scope—reads as follows:

"(a) These rules shall constitute an agreement between the Erie Railroad Company and its clerical, office, station and storehouse employes as repre-

Rule 1(g) quoted above, classifies positions on basis of preponderance of work, is conclusive and clearly shows intent, also is intended to prevent under-classification of those positions when clerical work is preponderant.

The assignment of two hours of work does not violate any provisions of the existing agreement. All of the work that is involved in this claim is now performed by an employee who is within the scope of the Clerks' Agreement and there is no allegation by the employees that any of such work is performed by any person outside the scope.

The same principle involved herein was also involved in Third Division Award 4170 in which Employees' claim was denied.

These claims are without merit and should be denied for the following reasons:

1. Carrier has not violated any provision of the existing Agreement.
2. Rule 1(g) contemplates that positions within scope of Agreement may perform the duties of classification in both Groups 1 and 2.
3. Casual or unassigned periods of overtime are not a part of a regular assignment.
4. Third Division Award 4170 supports the Carrier's right to reassign work such as was done in this claim.

OPINION OF BOARD: Prior to March 10, 1947, the work of checking cars on Galion yard and industrial tracks was performed by the Chief Clerk at the Galion Freight House, a position on Seniority Roster "A" of the Kent Seniority District. Effective that date the Chief Clerk was relieved from such work and it was assigned to a Checker at the Galion Freight House, a position on Seniority Roster "B" of the Kent Seniority District. This claim involves the change of assignment of such work.

In Award No. 2585 we held that "the employees on the respective rosters have the prior right to claim and perform work falling within the scope or purpose for which the roster is set up." The scope of Rosters "A" and "B", here involved, is defined in Rule 4 of the applicable Agreement as follows:

"Division Rosters as follows:

Roster 'A' to include clerks (except as indicated for Roster 'B' and under District Stores Department Rosters), baggage agents, icing inspectors, train and engine crew callers, telephone switchboard operators, waybill or ticket assorters, messengers, office boys, and others similarly employed.

Roster 'B' to include freight house foremen, assistant freight house foremen, receiving clerks, delivery clerks, checkers, flag clerks, ballot collectors, and Group 2 employees, except Stores Department."

Since "Checkers" are thus shown to be within the scope of Roster "B" it follows that checking work is work falling within the scope of that Roster and can properly be assigned to an employee thereon. We think the defined scope of the seniority roster determines the propriety of work assignment rather than prior performance of particular work by the occupant of a position on either roster, particularly in cases where the work involved is rarely part of the duty of the position involved as is admitted by the Organization to be the case here.

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 the Carrier did not violate the Agreement.

AWARD

The claim is hereby denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of October, 1949.