

Award No. 6887

Docket No. CL-6923

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the terms of the Clerks' Agreement at Centralia, Illinois, on March 12, 1950:

(a) When it permitted and/or required one Mr. R. H. Cover, employed as a Switchman, holding no rights under the Agreement in effect between the parties, to weigh cars; which class of work has been and is being performed by employees embraced within the scope of the Clerks' Agreement, and

(b) That Mr. John Lowe, Jr., a qualified Weighmaster, and who was off duty and available for that work on the day in question, be paid a call or two hours at a punitive rate of pay due to the Carrier's violative action.

EMPLOYEES' STATEMENT OF FACTS: On date of March 12, 1950 (Sunday), there were two cars—D.L.&W. 45278 and I.C. 75559—that had to be weighed so that proper freight charges could be assessed. Instead of calling the regular Weighmaster who was on duty at the time, or calling the senior qualified Weighmaster who was off duty and available to perform that work, the cars in question were weighed by Mr. R. H. Cover, employed as a Switchman, an employee without the scope of the Clerks' Agreement, and who was **not a sworn Weighmaster**—as is required by the rules and regulations promulgated by the Western Weighing and Inspection Bureau—and the two cars in question were forwarded without them being weighed by a bona fide sworn Weighmaster. Heretofore there was never any question posed as to who was entitled to this class of work at Centralia, Illinois, until the inception of the instant claim.

As of that date—March 12, 1950—there were two regularly assigned clerical employees and designated by Carrier, authorized Weighmasters; viz, G. C. Moeser, Baggage Clerk Job No. 63, hours of assignment from 3 P. M. to 11 P. M., and R. M. Miller, Record Clerk Job No. 57 with hours assignment 8 A. M. to 5 P. M. Both positions are designated seven day per week jobs and filled by Relief Clerks John Lowe, Jr. and J. E. Roddy who, too, are bonded Weighmasters.

claim has had no further handling and is presumed to have been abandoned.

The foregoing evidence proves conclusively that no craft on this property can claim an exclusive right to weigh cars. In most cases the weighing of cars is merely incidental to other duties. As shown in Carrier's Statement of Facts, Baggage-man G. C. Moeser was a baggage-man at Centralia, was a certified weighmaster, and was on duty at the time that two cars were allegedly weighed by Engine Foreman Cover. It is obvious that weighing cars is not an integral part of the duties of a baggage-man, but, when so assigned, is purely incidental thereto. The scope rule of the clerks' agreement, which specifies positions but not work, reserves to those covered by the agreement the duties which are historically and traditionally performed on the positions covered. It certainly cannot be said that baggage-men historically and traditionally weigh cars.

The Board is referred to Third Division Award 1418 and 1689. In both cases the Board denied claims presented because other than clerks weighed cars.

In their statement of claim, the Employees allege that the Carrier permitted and/or required Engine Foreman Cover to weigh cars. This is not a fact. Mr. Cover, if he did weigh any cars, did so without the knowledge of or instructions of his supervisors. The baggage-man at Centralia passenger station is ordinarily busy with the arrival of trains between 7:30 and 8:30 P.M. If Engine Foreman Cover weighed any cars, Carrier presumes he did so because there was some element of urgency and he felt that it would be a favor to the baggage-man not to call on him to weigh cars when the baggage-man was busy with the passenger trains.

It is the position of the carrier that the weighing of cars is a duty incidental to the work of many different crafts and exclusive to none. Not having contracted with any organization for the performance of the work, the carrier retains the right to assign it to anyone it chooses. Specifically, there is nothing in the scope rule of the clerks' agreement which reserves to clerks the exclusive right to weigh cars. It was, therefore, not a violation of the agreement for an engine foreman to weigh cars. The Board is requested to deny the claim.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that other than clerks have weighed cars at Centralia, Illinois; also that such is the practice throughout the railroad industry and likewise on Carrier's System. However, the question presented for consideration here is the weighing of revenue cars at Centralia, Illinois on a scale, designated as track scale located approximately 950 ft. north of the passenger depot.

Weighmasters are not listed in Scope Rule 1, however, on this record it is shown that the custom and practice of years standing had been on this scale to have revenue cars weighed by clerks qualified as weighmasters and that it has become a traditional practice. Therefore, it is concluded that the weighing of revenue cars at the scale designated above has become an integral part of clerk's duties and has been so recognized by the parties.

We therefore, find Claim (a) should be sustained in part, that is, that this work, although not covered in the Scope Rule, has by custom and practice of years standing become a part of clerk's duties, and this finding relates to revenue cars only at the scale designated.

Claim (b) is denied by reason of insufficient showing that the clerk on duty at the time in question could not have weighed these two revenue cars.

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 Claim (a) is sustained in accordance with Opinion and limited as shown therein.

That Claim (b) is denied as per Opinion.

AWARD

Claim (a) sustained in accordance with Opinion and Findings.

Claim (b) denied as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1955.