

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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 rules of the Clerks' Agreement at Cleveland, Ohio when on Saturday, January 5, 1952 and subsequent Saturdays, Employee C. S. Rozak was denied the right and opportunity to perform work on his position, checking the yards in the Lee Road territory, Cleveland, Ohio, Saturday being an unassigned day on his position, and

That, the Carrier shall now compensate Employee C. S. Rozak, Ticket and Demurrage Clerk, for four (4) hours at time and one-half rate for January 5, 1952 and all subsequent Saturdays he was denied the right to work on his position.

EMPLOYEES' STATEMENT OF FACTS: The industrial territory adjacent to the Erie Railroad tracks at Cleveland, Ohio extends generally from W. 54th St., Cleveland, Ohio roughly to a point beyond E. 131st St., Cleveland, Ohio, approximately eight (8) miles in length. There are a number of shippers and receivers of freight within this territory who have private tracks or sidings which are serviced by the Erie Railroad Company. This industrial area is divided into four territories for the purpose of industrial checking. To properly identify each territory, they will be designated as Territories A, B, C and D.

Territory A begins at W. 54th St. in the so-called river bed adjacent to the Erie ore docks and ends at "HD" Yard. This territory is assigned to R. V. Martley who is the Demurrage Clerk, Scranton Road, Cleveland, Ohio, and position is assigned to work five (5) days per week with relief days Saturday and Sunday. No relief is furnished. The Employees attach as their Exhibit No. 1 copy of recent bulletin advertising this position.

Territory B starts with the firms east of "HD" Yard and ends at E. 55th St. At the time this claim originated, this territory was assigned to J. D. Carbone, Yard Checker, a five-day position with relief days Saturday and Sunday, no relief furnished. The Employees attach as their Exhibit No. 2 copy of bulletin advertising this position.

Territory C begins with firms east of E. 55th St. Yard and terminates at Newburg Yard. This territory is assigned to W. W. Hurley, Yard Clerk.

contrary rests upon the claimant. This burden, of course, can only be met by authoritative proof.

The Carrier denies violation of any agreement rule and submits that the claim is without merit and should be denied.

All of the information herein has been discussed with or is known to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The industrial area adjacent to Carrier's tracks at Cleveland, Ohio, is approximately eight miles in length. The claimant asserts that this territory was divided into four territories for the purpose of performing industrial checking and other yard duties. For convenience, claimant designates these four territories as A, B, C and D. It is asserted that a Demurrage Clerk is assigned to Territory A; a Yard Checker to Territory B; a Yard Clerk to Territory C; and a Demurrage and Ticket Clerk to Territory D. All are assigned five day positions, Monday through Friday, except the Yard Clerk who is assigned Friday through Tuesday on a seven day position with relief being provided on Wednesdays and Thursdays. Claimant alleges that he was assigned to work the position of Demurrage and Ticket Clerk on Territory D. The Carrier denies that these four employees were assigned to specific territories and asserts that each was used where needed in the Cleveland Yard. While it is true that the bulletined assignments of these four positions does not prescribe territorial assignments within the yard, the record shows that they were so used over a long period of time. We think it can reasonably be said under the record before us that the work of each position was limited to the territories as alleged by the claimant.

Due to an ICC order, a track check for the purpose of ascertaining demurrage charges was required to be made on Saturdays and Sundays, effective August 1, 1950. In order to comply with this requirement, the Demurrage Clerk and Yard Clerk jobs were changed to seven-day positions. During the existence of these seven-day positions, the incumbents of the positions together with a Ticket Clerk (not the Demurrage and Ticket Clerk) in Territory D, made the necessary track checks on Saturdays and Sundays. Claimant was not used on Saturdays or Sundays during this period and he has claimed no violation because thereof.

On May 1, 1951, the ICC eliminated the necessity for Sunday track checks for demurrage purposes. The Demurrage Clerk and Yard Checkers positions reverted thereafter to five-day positions. Commencing on June 16, 1951, until August 31, 1953, when the ICC order expired and terminated the present claim, the Saturday track checks were made by the Demurrage Clerk (R. V. Martley), the Yard Checker (J. D. Carbone), and the Ticket Clerk (Joseph Gut) at Lee Road (Territory D). It is asserted that Carbone was used to perform the Saturday work in Territory D at the time and one-half rate. Claimant contends that Carbone performed four hours' work on each Saturday during the period of the claim in Territory D. Claimant contends that this work belonged to him and this claim is based on his alleged right to perform it. Claimant relies primarily on Rule 20-3 (f) which provides:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases, by the regular employe."

There were no extra or unassigned employees available. Claimant therefore contends that the work of the assigned rest day of his position belonged to him. Awards 5475, 7130.

We shall deal first with the claim that Carrier violated the Agreement in permitting the Ticket Clerk (Gut) to do the track checks on Saturdays

during the period of the claim. The Ticket Clerk was assigned to a seven-day position at Lee Road (Territory D). He was assigned Saturday through Wednesday, with Thursday and Friday as rest days. He worked regularly on Saturdays and Sundays. Track check work was not assigned specifically to claimant or to the Ticket Clerk (Gut). The latter could therefore perform the track check work on Saturdays as a part of his regular assignment. This is made clear by Award 7001. While that award sustained the position of the Organization, we point out that it held that under very similar circumstances the Ticket Clerk could do the work as a part of his regular assignment, but he was not entitled to perform it on an overtime basis as against the claims of the regular employee to such overtime work of his position. We hold, therefore, that the use of the Ticket Clerk (Gut) to perform the work on Saturdays during his regular assignment was not a violation of the Agreement.

We next consider the right of the claimant (Rozak), the regularly assigned Demurrage and Ticket Clerk, assigned Monday through Friday, to perform the work on Saturday, as against the claim of the Carrier that the Yard Checker (Carbone) was rightfully assigned to it. On this issue, we think the position of the Organization is the correct one. The work is incidental to Rozak's position and under the provisions of Rule 20-3 (f) it belongs to him. It is work necessary to be performed on a day which is not a part of any assignment. In the absence of a regularly assigned relief man, or an available extra or unassigned employee who will not otherwise have 40-hours of work that week, it belongs to the regular employee, Rozak. See Award 7130 and awards therein cited. It is evident that any work performed in Territory D (Lee Road) by the Yard Clerk (Carbone) was paid for at the overtime rate. If the work was considered as overtime, it belonged to Rozak under Rule 20-1 (d), the preferential overtime rule.

We conclude therefore that claimant had a prior right to the track checking work performed by the Yard Clerk (Carbone) in Territory D (Lee Road). The claim will be sustained at the pro rata rate for all time worked by Carbone at Lee Road on Saturdays during the period of the claim.

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 claim was violated to the extent shown by the Opinion.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1955.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 7131

Docket No. CL-7204

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Erie Railroad Company.

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The request for an interpretation in this case involves the meaning to be given to the following language of the Award:

"We conclude therefore that claimant had a prior right to the track checking work performed by the Yard Clerk (Carbone) in Territory D (Lee Road). The claim will be sustained at the pro rata rate for all time worked by Carbone at Lee Road on Saturdays during the period of the claim."

The position taken by the Organization in interpreting this award is the correct one. We call attention to the fact that the claim made by Rozak was for the yard checking work in the Lee Road territory on Saturday, January 5, 1952, and subsequent Saturdays. This was the claim which was sustained. We are in agreement with the Carrier that the record in this docket was confusing and conflicting. It is for that very reason that we undertook to identify positions involved by showing the occupant thereof in parenthesis. So far as the record shows, Carbone was the only occupant of the Yard Clerk position doing Rozak's work on the Saturdays which constituted the basis for the claim. We accepted the record as we found it. The resignation of Carbone after the claim was made and the filling of his position by another cannot react to the disadvantage of Rozak whose claim is for the Saturday work he has lost.

The effect of the award is to hold that Claimant Rozak is entitled to the track checking work performed by others in Territory D on Saturday, January 5, 1952, and subsequent Saturdays until the violation is corrected.

Referee Edward F. Carter, who sat with the Division as a member when Award No. 7131 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 20th day of April, 1956.