

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**

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the rules of the current Clerks' Agreement when it required Tallyman C. W. Cottrell, a Group 1 employe to work alone on August 4, 1951, thereby performing his own trucking, work which is properly assigned in Group 3.

2. That Trucker J. J. Martin, who did not work on that day, as he was not notified or called by the Carrier for that purpose, be paid at the pro rata rate for August 4, 1951.

EMPLOYEES' STATEMENT OF FACTS: At the Clarksburg Freight Station, Clarksburg, W. Va., nine tallymen and nine truckers were instructed to report for duty on Saturday, August 4, 1951. One trucker failed to show up. Carrier proceeded to work nine tallymen and eight truckers, which required one tallyman to work alone. Consequently, he performed a considerable amount of trucking on that date.

We incorporate the Memorandum of Conference held at Grafton, W. Va., on May 28, 1952 as Employees' Exhibit No. 1, and Form 762-A signed by Regional Accountant W. E. Smith on August 27, 1951, as Employees Exhibit No. 2.

CARRIER'S STATEMENT OF FACTS: In anticipation of an expected volume of business nine tallymen and nine truckers were instructed to report for work at the Clarksburg Freight Platform, Clarksburg, W. Va., on Saturday, August 4, 1951. One of these truckers failed to report. The eight available truckers were assigned to work with eight tallymen and Tallyman C. W. Cottrell was required to do his own trucking.

POSITION OF EMPLOYEES: It is the contention of the Employees that Carrier violated the rules of the current Clerks' Agreement by requiring or permitting Tallyman C. W. Cottrell, a Group 1 employe, to work alone, thereby performing his own trucking, work which is properly assigned in Group 3.

2 employe to act as Messenger; and a Group 3 employe to truck freight.

"Rule 1, Section (a), (the Scope Rule), classifies employes covered by the Clerks' Agreement into three groups according to the preponderance of work. However, neither this rule nor any other rules confine work covered by the Clerks' Agreement to any particular classification or group.

"Your Board has consistently ruled in many cases that the Clerks' Agreement permits an employe in one group to perform work of other groups, * * *." (Emphasis ours.)

Thus the Carrier, in Award 6140, argued it was essentially immaterial how much time a Group 1 employe devoted to work apart from strictly clerical work. The Group 1 employe was paid the higher rate. Actually there is no showing here, and the Organization on this property has made no showing, that on the date of the claim the tallyman performed less than four hours clerical work.

In the "Opinion of Board" in Award 6140 it was held in part as follows:

"This case does not involve any change in work assignments but simply presents a contention that the established practice of requiring check clerks to load or assist in loading freight onto trucks at Huntington Freight Station is a violation of the Agreement. That contention is based upon the theory that loading is work reserved by the Agreement to Group 3 employes (Laborers) and may not be performed by Group 1 employes (Clerical Workers).

"Rule 1(a) defines the three groups of employes covered by the Agreement. Group 3 consists of laborers employed in and around offices, stations, storehouses, warehouses, and so forth. Group 1 consists of employes who regularly devote not less than four hours per day to certain specified clerical duties. Neither that rule nor any other rule prohibits the performance of manual labor by Group 1 employes nor specifically reserves the performance of all manual labor to Group 3 employes. In the absence of such a specified rule, the established practice whereby check clerks loaded or assisted in loading freight they were checking is not a violation of the Agreement. Hence the claim is without merit."

The claim in Award 6140 was denied.

In terms of the factual record in this case, in terms of the rules appearing in the applicable agreement and in terms of decisions already reached before this labor tribunal in similar cases involving similar disputes, the Carrier asserts that the claim made here is not valid.

The Carrier respectfully requests that this Division find this claim as being without merit and that it act to deny it.

This dispute has been handled in accordance with the provisions of the Railway Labor Act, as amended. No agreement on a settlement thereof having been reached between the parties, it is hereby submitted to the National Railroad Adjustment Board for decision.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this record are not in dispute. In brief, Carrier instructed nine (9) tallymen (Group 1 employes) and nine (9) truckers (Group 3 employes) to report for work on Saturday, August

4, 1951. One trucker failed to report and Carrier did not call a trucker to take his place. The result was that one tallyman did his own trucking.

The question presented: Was the failure to supply a ninth trucker a violation of the rules of the Agreement?

It is alleged that Claimant Martin was an available employee and was willing to work on this date. And it is contended that Carrier was obliged to call another Group 3 employee on a seniority basis to fill a Group 3 vacancy.

Carrier contends, in brief, that under Group 1, Rule 1 (a), Clerks are defined as "Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts" etc. and that this language contemplates the combination of non-clerical work with clerical work. Citing in support of this position Rule 2 (a) involved in denial Award 7167. Also cited is Awards 6140 and 2011.

We are of the opinion that a different situation is presented here than that considered in Award 6140. This is not a dispute involving a tallyman assisting a trucker, or can it be said to meet the situation considered in Award 7167 where it was contended Claimants were used to absorb overtime. The claim here presents a situation where nine truckers were instructed to report and only eight appeared for work. The claim is made on behalf of a trucker not called although available, not on behalf of the tallyman, who did trucking on the date in question.

It is contended in this record that only eight truckers were needed, however, at the time instructions were given nine truckers were called to work with nine tallymen and trucking was done by the ninth tallyman. The situation presented is not that considered in the Awards cited, Awards 6140 and 7167.

We are of the opinion on this record Claimant Martin was entitled to be called. The contention that he was not needed is not borne out by this record.

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 Agreement was violated.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 26th day of March, 1956.

DISSENT TO AWARD 7290, DOCKET CL-7302

The instant Award is based upon the erroneous premise that the claimant trucker herein was available and needed. The Carrier had no advance notice

that a trucker would fail to show up. To have called claimant would have resulted in considerable delay in any event, and the record shows that at that time it had developed that there wasn't enough work for an additional man. No rule was shown, and there is none, which required Carrier to call an additional man under the circumstances which had developed. Consequently the instant Award requires the Carrier to pay for eight hours' work which was shown to be non-existent.

Furthermore, the distinctions made by the majority herein between the instant case and the cases covered by Awards 7167, 6140 and 2011, in which this Division denied the claims, are distinctions without a difference insofar as the issue is concerned, and there is no support in the rules therefore. In all four cases, the issue involved was the right of employees in Group 1 to perform work in other Groups in which they also held seniority.

For the above reasons this Award is in error and we dissent thereto.

/s/ **W. H. Castle**
/s/ **R. M. Butler**
/s/ **C. P. Dugan**
/s/ **J. E. Kemp**
/s/ **J. F. Mullen**