

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the rules of the Clerks' Agreement at Lorain, Ohio when on February 27, 1954, and subsequent dates, the Carrier permitted employees not covered by the Clerks' Agreement to perform work covered thereby, and

That Carrier shall now compensate Employee Dominic Collela for fifty-five (55) minutes at time and one-half rate for clerical work performed by Trainmaster Bracer and Yardmaster Ray Butler on February 27, 1954, and

That Carrier shall compensate Employee Collela at time and one-half rate on all subsequent dates when employees not covered by the Clerks' Agreement were permitted to perform duties or work attaching to position held by Employee Collela. (Claim: LT-24)

EMPLOYES' STATEMENT OF FACTS: Prior to abolishing of position of Weighmaster No. 5 Scales, the duties on position of East Yard Dispatcher consisted of the following:

1. Answer all telephone calls.
2. When crews come into lunch they reported to the clerk who marked the time down on a lunch report. When twenty minutes were up, the clerk called the crews out from lunch. The clerk also fixed the lunch period and filled in all necessary information on the time sheets.
3. Get mail ready for messenger and receive switch orders from them.
4. Draw off all pipe shipments and post on LT 97.
5. Check yard for pipe that goes to 768, 732 and 705 (Locations)
6. Yard locate rounds when needed.

"As pointed out in the opinion in Award 2133, the line between Yardmasters and Yard Clerks is not clear and distinct. In a reference to this subject and to named Awards, the opinion states:

"The opinions in those awards clearly show that the duties of yardmasters are varied, that essentially this work is supervisory, and that as an incident to these duties yardmasters of necessity perform some clerical work. Likewise in some instances Clerks under the direction of yardmasters perform certain work which in other cases may be done by yardmasters, themselves. * * * The border line which marks the division between these two branches of work is so shadowy it is incumbent on those who claim a violation of the agreement to show that the yardmasters have in fact become clerks and that the clerks have been entrusted with such supervisory and responsible duties that they are in fact yardmasters.' "

See also Third Division Award No. 5135 with Referee A. Langley Coffey reaffirming the above Statement of Principle.

With respect to the third paragraph of the Statement of Claim requesting penalty payment for alleged violations on "subsequent dates" it is submitted that there is not sufficient proof of any violations on subsequent dates to support a claim. In this connection see Award No. 6666 of this Division, with Referee Francis J. Robertson, to the effect that the employees have the burden of establishing sufficient probative evidence to support a finding of violating the Agreement.

In view of the foregoing it is respectfully submitted that this claim should be dismissed.

It is hereby affirmed that all data submitted in support of the Carrier's position have been submitted in substance to the employees or their duly authorized representatives and made a part of the particular case in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to February 23, 1954, at Lorain, Ohio, there were two separate positions, one known as East Yard Dispatcher, the other as Weighmaster—No. 5 Scales. Shortly before the above date, the weighing of outbound shipments of pipe was discontinued at No. 5 Scales, and these scales were used only occasionally for miscellaneous weighing. This resulted in the elimination of most of the work of the Weighmaster position. The Carrier abolished that position and also the position of East Yard Dispatcher, and advertised a new position on February 23, 1954, called Weighmaster-Yard Dispatcher, East Yard. The duties of the new position consisted of the duties of the old East Yard Dispatcher position plus the remaining duties of the Weighmaster—No. 5 Scales position. Claimant was the senior applicant for the new position.

The Weighmaster-Yard Dispatcher, East Yard and the Yardmaster are both located in the yard office. The yard office is on the second floor of the building in which the No. 5 Scales are on the first floor. According to Claimant's submission, the incumbent of the old East Yard Dispatcher position performed his full tour of eight hours without leaving the yard office, whereas now the incumbent of the new Weighmaster-Yard Dispatcher position must leave the yard office in order to perform his duties at the scales. It is this necessity to leave the yard office which gives rise to the claim.

The claim is that on February 27, 1954, while Claimant was out of the yard office weighing cars from 11:15 A. M. to 12:05 P. M., the yardmaster answered the telephone, took switch orders and filed switch orders, and put down the time crews came in to lunch and went off lunch. The trainmaster

delivered copies of switch orders to the yardmaster. It is asserted that this is clerical work and compensation for 55 minutes at time-and-one-half is asked for Claimant. In addition, although no other dates are named and no other work is specified, compensation is claimed for all subsequent dates when work attaching to Claimant's position was done by non-clerical employes. The claim is based upon the scope rule, particularly that sentence which reads:

"Positions or work coming within the scope of this agreement belong to the employes covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto."

There is a twofold question presented under this rule. First, does the work in question come within the scope of the Agreement. Second, assuming that it does, was it "removed" therefrom.

On the first question, there are conflicting statements in the record. Claimant says that the yardmaster never was required to perform clerical work of the nature involved in the claim prior to the time that weighmaster duties were added to the yard dispatcher position. This statement is substantiated by a letter written at the request of the Clerks' General Chairman, by the General Chairman of the Brotherhood of Railroad Trainmen, which organization apparently represents the yardmasters on the property. Carrier, on the other hand, states that in the past both yardmasters and clerks have answered telephones and written down switch orders; and yardmasters have marked down the time crew came to and from lunch on occasions when the clerk happened to be out of the office. Carrier also states that the yardmaster did not "file" any switch orders on February 27, but merely received them and left them for the clerk to perform the necessary clerical work on them.

The Board has had many occasions to consider the question of the dividing line between the work belonging to yardmasters and that belonging to clerks working under their direction. It has been stated that "the border line which marks the division between these two branches of work is so shadowy it is incumbent on those who claim a violation of the agreement to show that the yardmasters have in fact become clerks . . ." See Awards 2133, 3907, 5112, 5135. Having in mind this history of a certain amount of overlapping and the absence of any distinct and definite line, we think that the record here indicates that the kind of work involved in the claim was regularly and customarily performed by the East Yard Dispatcher as part of his regular assignment; but that on such occasions as the East Yard Dispatcher was busy with other duties or absent from the yard office, the yardmaster has answered the telephone and written down switch orders, received written switch orders and noted down the time taken by crews at lunch.

On this state of facts, while recognizing the effect which has been given to similar scope rules in other situations—for example, where Carrier has abolished a clerical position and assigned some or all of the duties thereof to a position outside the Agreement, as in Awards 5785, 5790 and others—we do not think it supports the instant claim. The situation here differs from those cases and from any other cases which have been cited to us in connection with this dispute, including the three which involved these same parties, Awards 3490, 3491 and 3492, and Award 6760, where duties of an existing position were assigned to a position not under the Agreement. Here, the Carrier abolished two clerical positions and assigned all of the duties of the two positions to a newly created clerical position. Even accepting Claimant's argument that only the weighmaster position was really abolished, and its duties added to the existing yard dispatcher position, no clerical duties were assigned to any position not covered by the Clerks' Agreement. On one day—February 27, 1954—the "weighing" duties of the new position required the incumbent to be out of the yard office at a time when certain other duties of the position had to be performed there. Such duties were performed by the

trainmaster and yardmaster, who were in the yard office at the time. The record does not indicate how often such weighing duties occurred or were expected to occur under the new position. The only statement is the Carrier's that the scales were used "only occasionally". It does appear from the record that the use of the scales was completely discontinued on May 28, 1954.

The gist of Claimant's argument is that although clerical duties were not "assigned", as such, to the yardmaster, the necessary effect of the increased work of the new clerical position was that the incumbent could not perform all the required duties; so that, of necessity, part of those duties had to be accomplished by the yardmaster, and amounted to the same thing as having the duties formally assigned to him. We do not think there is sufficient evidence in the record to support such an argument. It is not established that Claimant was required to attend the scales other than on the day in question. If he was so required, it is not established that it was at a time which prevented him from doing other work. If it did, it is not established that such work was done by the yardmaster or trainmaster or anyone else. In short, we cannot find from the fact that on one occasion work was performed by the yardmaster and trainmaster, which would have been performed by Claimant had his other duties not required his absence from the yard office, that this amounted to removal of work from Claimant's position and assignment of that work to a position outside of the Clerk's Agreement. Nor do we consider that the performance of the work by the trainmaster and yardmaster on that occasion constituted a violation of the Clerks' Agreement, in view of our finding that such work has occasionally been done by them in the past.

It appears that the real complaint here is not that work was removed from under the Clerks' Agreement, but that work formerly assigned to two positions under that Agreement is now assigned to one; and that it is too much work for one position to handle. However, the claim is not presented to us on this basis, but on the basis of the scope rule, and we have so considered it.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of October, 1956.