

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope on February 22, 1949, by using Yardmaster John Fleming to perform the clerical duties of clerical position, Symbol G-136 at Morris Street Yard, Philadelphia, Pa., Philadelphia Terminal Division.

(b) Clerk William Ryder, incumbent Position G-136 be allowed eight hours pay, at the punitive rate, for February 22, 1949. (Docket E-837)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in this case, Clerk William Ryder, is regularly assigned to Clerical Position G-136, located at Morris Street Yard, Philadelphia, Pa., Philadelphia Terminal Division, and has seniority standing on the seniority roster of the Philadelphia Terminal Division in Group 1.

The D-16 District in Philadelphia which embraces Morris Street Yard is under the supervision of Yard Master John Fleming. Mr. Fleming's headquarters is not located at Morris Street Yard Office, but is located at the D-16 Office.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

Oral hearing is desired.

All data contained herein have been presented to the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The D-16 District includes the three yards known as D-16, Dock Street and Morris Street Yards, and maintains a pool of six yard crews on regular work days, two of which regularly report at each of the three points. On Sundays and holidays only two crews are used; they are assigned in rotation, and on February 22, 1949, a holiday, the working crews were those reporting at Morris Street.

It is the Yard Master's duty to assign and supervise yard crews throughout his district. His headquarters are at D-16, but he is not limited to that point. It is admitted that on February 22, 1949, the Yard Master "proceeded to Morris Street to supervise the crews at that location; * * * he was there for approximately four hours." The claim is that thereby "The Carrier violated the Rules Agreement * * * by using Yardmaster John Fleming to perform the clerical duties" of Claimant at Morris Street Yard.

On ordinary work days, when six crews are operating, the Yard Master needs more than merely clerical assistance. Consequently, for those days a position characterized by both Claimant and Carrier as a "Yardmaster-Clerk," was established at Morris Street Yard. It was not necessary on Sundays and holidays, when only two crews are working, and therefore was not made a seven day position.

So far as here applicable the Scope Rule defines a Clerk as:

"An employe who regularly devotes not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements, and similar work, and to the operation of office mechanical equipment and devices, * * *."

In addition the bulletin for Claimant's position required him to be "Familiar with physical characteristics of district; conversant with Car Service Rules, Trainmen's Regulations and able to assign work crews; register crews and weigh cars; assume responsibility without direction."

The requirements that he be "able to assign work to crews" and "assume responsibility without direction" are not within the Scope Rule, and are the requirements stressed by both parties as making the position essentially that of "Yardmaster-Clerk," rather than merely Clerk.

The contention is that the work performed that day by the Yardmaster consisted of (1) witnessing the signatures of yard crews, (2) registering yard crews, and (3) directing the work of yard crews. None of the three duties is definitely defined in the Scope Rule; but the second and third are mentioned by the bulletin and the first is incidental to the second.

The record does not show that the Yard Master witnessed signatures or registered yard crews. On the contrary, it shows without contradiction (p. 17) that "there was a Yard Clerk on duty at Morris Street from 11:59 P. M., February 21, 1949, until 7:59 A. M., February 22, 1949, and that he prepared time returns for the first trick yard crews and witnessed signatures

as the crews registered, one crew reporting at 7:30 A.M., and the other reporting at 7:59 A.M., February 22, 1949; that the Yardmaster did not perform any work of witnessing signatures and registering crews at Morris Street."

But admittedly the Yardmaster did perform on a holiday the duty of assigning work to yard crews, which, so far as Morris Street Yard was concerned, would have been done on a regular work day, in any of three ways: that is, (1) by the Yardmaster directly; (2) by the Yard Master through Claimant; or (3) by Claimant on his own responsibility. That being true, the Yardmaster must certainly retain the authority on the holiday, when the Clerk has not even concurrent jurisdiction.

The four hours of supervisory work performed by the Yardmaster elsewhere is not mentioned, and if the four hours spent at Morris Street yard had been performed at his own headquarters, or at Dock Street, or anywhere in his district but Morris Street, this claim would not have arisen. For the contention is that "a Yardmaster could not spend four hours or more at Morris Street without performing some, or all, of the duties comprehended in the bulletin" of Claimant's position.

In this connection two facts must be noted. First, that the establishment of Claimant's position did not terminate the Yardmaster's authority to supervise and direct the yard crews of his district. Claimants did not supersede the Yardmaster, even at Morris Street Yard, but was authorized merely to assist him in his supervisory work at that point. Thus his supervisory duties were subordinate and concurrent; while the same is not true of his purely clerical duties, we are not here concerned with them.

The second fact to be noted is that on February 22, 1949, the two yard crews were performing the work of the entire district. How much of it, if any, was Morris Street Yard work and thus within Claimant's concurrent jurisdiction with the Yardmaster on regular work days, is not shown.

Thus, even on regular work days, none of the supervisory work done on February 22, 1949, by the Yard Master at Morris Street Yard would have been exclusively Claimant's, and only part of it would have been even concurrently his. Furthermore, whether Claimant is at work or not, the Yard Master has full authority to perform his supervisory work (as distinguished from Claimant's clerical work) in person, either at Morris Street Yard or elsewhere in his district. Consequently the fact that he performed it there on the holiday named does not mean that he performed the work of Claimant's assignment rather than his own.

Claimant cites awards holding that, except as permitted by the Agreement, supervisors cannot, on Sundays or holidays, perform clerical work incident to their own positions, if such clerical duties are assigned to Clerks on regular work days. It is argued that some of the awards even mean that the supervisor cannot therefore perform even his own supervisory work on holidays, if on regular work days a Clerk has concurrent authority to perform it, as here. The awards cited have not that effect; so to hold would violate, both the Carrier's prerogatives and the Yard Master's Agreement.

It is axiomatic that the Carrier has all management prerogatives not relinquished by Rules Agreements. Thus, if it finds that a position such as Claimant's is required on regular work days, but not on holidays and Sundays, it may establish such position unless prohibited therefrom by specific provision or necessary implication of the Agreement. If not, it could get the necessary work done only by incurring wholly unnecessary expense and waste of time. No provision of the Agreement has been cited or found so requiring.

The Yard Master's work of supervising crews at Morris Street Yard on Sundays and holidays was within his own assignment rather than Claimant's and the Carrier's prerogative to limit Claimant's assignment to ordinary working days is not precluded by the Rules.

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 28th day of January, 1958.