Award No. 8342
Docket No. CL-7929

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, 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, by assigning clerical duties of weighing cars, checking tracks and phoning switch lists to employes not covered by the Clerical Rules Agreement at Fort Wayne, Indiana, Fort Wayne Division.

(b) The Claimant, E. C. Langschied, should be allowed eight hours pay a day for November 20, 21, 27, 28, December 4, 5, 11, 12, 18, 19, 25 and 26, 1951, January 1, 2, 8, 9, 15, 16, 22, 23, 29, 30, February 5, 6, 12, 13, 19, 20, 26, 27, March 4 and 5, 1952, as a penalty, because of this violation. (Docket W-868)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes 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 Employes 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, E. C. Langschied, is regularly assigned as a Yard Clerk, Fort Wayne Yard, Fort Wayne, Indiana, Fort Wayne Division, 3:00 P.M. to 11:00 P.M., Thursday through Monday, rest days Tuesday and Wednesday.

grant the claim in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned to second-trick clerical position B-11-G in west end of Carrier's Fort Wayne Yard. He is asking for pro rata compensation for eight hours on certain of his rest days in the latter part of 1951 and the early part of 1952 on the grounds that Yard Conductors such as Hale and Glass and/or Yard Masters were then performing clerical duties of weighing cars, checking tracks, and telephoning switch lists in violation of the Scope Rule of the Parties' Agreement.

The Parties agree that for many years at the Fort Wayne Yard prior to instant claim Yard Conductors such as Hale and Glass had weighed cars on the scale track, maintained records of cars handled (using forms CT 31, CT 143, or CT 362), and received switch list information by telephone from the Yard Master. Also agreed on are the facts that the bulletin covering Claimant's position included as primary duties the preparation of switch cards, the taking of records of cars in trains on form CT 362, the checking of yard tracks, and the taking of tonnage (this does not mean weighing cars); and Claimant had been performing said duties. Further agreed on is the fact that a questionnaire used for rating clerical jobs listed as certain items of clerical work the making of track checks, the weighing of cars and the preparation of reports incidental thereto, and the preparation of switch lists for classification of cars.

The Parties agree, finally, that in January, 1941, two temporary clerical positions were established and later (in March, 1941) abolished, following which, in cases 106, 107, and 108, claims were presented based on the contention that Yard Conductors and Yard Masters were doing clerical work. In 1943 these claims were allowed by Carrier; in "full, final, and complete settlement" of said cases Carrier compensated the senior qualified Clerks available for service on dates of claims. After said settlement no clerical positions were established or re-established. The Carrier asserts that the work complained of and performed by Yard Conductors and/or Yard Masters in the 1943 settlement was not the same as that done by them in the instant case. The Organization asserts the opposite.

The issue presented in this case is whether, as of claim dates, Yard Conductors, such as Hale and Glass, and/or Yard Masters were performing duties which, by virtue of the Scope Rule in the Parties' controlling Agree-

ment, were reserved exclusively to Clerks such as the Claimant. This issue may be approached in two ways: (1) under the general Scope Rule, wherein (in Group 1) Clerks are defined; and (2) under the exception to said definition contained in Rule 3-C-2.

The Scope Rule involved here sets forth in rather general terms first a list of operations and equipment (covering four or more hours of work per day) and second a list of positions. It cannot be considered as being specifically conclusive in respect to all the many kinds of clerical duties embraced by the Agreement. In such case the awards of this Division (e.g., 5526 and 7322) have commonly held that such specificity is to be discovered from evidence on past practice, tradition, and custom. Awards (e.g., 8279) have also ruled that some clerical work is incidental to many kinds of non-clerical positions, and the performance of such incidental work does not constitute an invasion of the agreed-on jurisdiction of the Clerks.

As to past practice under the general Scope Rule, Carrier asserts the following in respect to the three kinds of contested work mentioned in the claim: (1) The weighing of cars on the scale track of Fort Wayne Yard has always been done by Conductors or Trainmen, never by Clerks, since 1932. As of claim dates, Yard Conductor Hale's weighing of cars on said track was entirely in accord with such past practice. (2) The alleged track checking by Yard Conductor Glass was also no more than had been done since before 1941 by Yard Conductors. It was not the track check that was and is properly performed by Clerks. It involved only the incidental copying of the initials and last three numbers of cars not previously checked by Yard Clerks. (3) Glass's receipt of switch lists by telephone from the Yard Master was also an incidental, necessary part of his long-customary duties. (4) In summary, as of claim dates Yard Conductors Hale and Glass were (a) doing nothing out of line with accepted past practice and (b) were not doing any of the disputed work on the basis of which Carrier affirmatively settled the 1941-1943 cases 106, 107, and 108.

In the light of the whole record we are compelled to conclude that the Organization has failed to produce substantial evidence disproving the above-summarized assertions of Carrier. First, if the Organization had shown that the disputed work done by Hale and Glass in the instant case was the same as that done by the Yard Conductors involved in the 1943 settlement, there would be at least a presumption of validity to the claim now before use. But proof on this point is lacking. Second, if the Organization had established that in January-March, 1941, Carrier had given some of the Yard Conductors' duties to the temporary Clerk positions and then, after abolishing such temporary positions, had returned same to the Yard Conductors, same continuing to the dates of the instant claim, there would be at least a question as to what actually has been past practice. Said question would be whether the two-month 1941 experience outweighs the much greater length of experience asserted by Carrier. We do not pass on this matter here because of Organization's failure to show, beyond assertion what happened in 1941 and since. Third, we are not persuaded that the language of the Bulletin for Position B-11-G, and the Questionnaire, summarized above, which may be said to enlarge upon the more general language of the Scope Rule, are determinatively relevant to the instant case.

It must be concluded that, so far as the general Scope Rule and practice thereunder is concerned, a case for an affirmative ruling here has not here been made.

Rule 3-C-2, which has to do with an exception to the general Scope Rule, must next be considered. In subsection (a) it is stated:

> "When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:
>
> > "(1) To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed."

In respect to the instant case this language raises four questions: (1) What does "position" mean? (2) After the abolishment of the 1941 temporary positions, was there work which remained to be performed as of claim dates? (3) If so, did other Clerk positions remain, as of claim dates, at the location of the abolished positions, to which the duties of the latter could have, as of claim dates, been assigned? (4) If so, was the remaining work of the abolished positions assigned, as of claim dates, to such other Clerk positions, or was it given to Yard Conductors and/or Yard Masters?

As to question (1), "position" is not qualified or restricted by any adjective. Therefore this word must be taken to apply to both permanent and temporary jobs. The two Clerk positions created and abolished in January-March, 1941, are covered by 3-C-2(a), the language of which is like that in the Agreement then in effect.

As to question (2) above, Carrier asserts that the temporary positions in 1941 were abolished because the conditions causing their creation—bad weather and unusually heavy traffic—ceased to exist. However, this assertion, whether or not disproved by the Organization, does not dispose of the matter. When positions are abolished, some of the work thereof may remain. Carrier's affirmative settlement of cases 106, 107, and 108 in 1943 persuades that some did remain as of that date. The record further suggests that as of the dates of the instant claim some of the kind of work done on the temporary jobs still remained.

As to question (3) above, Rule 3-C-2(a)(1) states how the remaining work of abolished positions is to be assigned, namely to other Clerk positions if some exist at the location where the remaining work of the abolished positions is to be done. In the instant case the location is Fort Wayne Yard. There were Clerk positions there as of claim dates. Therefore said positions should have been assigned the remaining work of the abolished temporary positions as of those dates.

Question (4) above asks, Were they? Or was some of said remaining work being done, as of claim dates, by Yard Conductors like Hall and Glass and/or Yard Masters?

From the settlement of Cases 106, 107, and 108 in 1943 it may be concluded that the Yard Men had been given some of the remaining work of the abolished positions before that date. Carrier asserts that same was not true as of claim dates.

The crucial matter then becomes, Has the Organization substantially shown that Carrier's assertion is wrong? A study of the record compels the conclusion that there is no substantial evidence that as of claim dates Yard

Conductors and/or Yard Masters had been assigned the work which remained to be performed of the temporary positions abolished in March, 1941.

This being so, a denial award is in order.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1958.