

Award No. 8838
Docket No. CL-8355

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

(1) When the Carrier continued to require and permit the Assistant General Yardmaster, Footboard Yardmaster, Brakeman and Conductor at Manly, Iowa, to make train list of cars and check as to cars that would be in train, and such information furnished the Yard Clerk in order that he could pull the waybills and deliver to the Conductor. (See Statement of Facts dated November 18, 1952, Exhibit No. 4.)

(2) That clerical work performed by the Yardmaster and employees of other crafts be returned to the clerical forces.

(3) That the Carrier be directed by appropriate order to pay Clerk at Manly, Iowa, Mr. J. L. Anderson, four (4) hours punitive rate each day, effective April 1, 1952 until the violation has been discontinued in accordance with claim filed with the Division Superintendent on August 12, 1952.

(b) That Robert E. Swarmer, Clerk at Manly, Iowa, be paid eight (8) hours at punitive rate, effective October 22, 1952, in accordance with claim filed November 9, 1952, with Superintendent R. H. Spicer, which is a continuous claim until the violation (requiring Conductors wheeling cars by pencil of cars in their trains which should have been wheeled on teletype machine by the Yard Clerk) is discontinued.

EMPLOYES' STATEMENT OF FACTS: August 12, 1952, Yard Clerk James L. Anderson, Manly, Iowa had claims filed with Superintendent J. H. Lloyd, claiming four (4 hrs.) hours punitive time each day, effective April 1,

Q. (By Mr. Blanchard) Would you base your claim, then, due to the fact that someone told you this was going on?

A. (By Mr. Anderson) Yes, because I can't come down every night and watch them.

Q. (By Mr. Blanchard) In other words, you have no other basis for this claim that second hand information?

A. (By Mr. Anderson) And what I have seen myself."

Mr. Anderson's claim should be declined for the above reason, as well as that stated previously in our reply to Paragraph (1) of the Statement of Claim.

The claim of Clerk Robert E. Swarmer, appearing at paragraph 3(b) of the Statement of Claim, likewise should be declined for lack of support in the Agreement. This claim was filed subsequent to the October 12, 1952 meeting at Manly and hence was not discussed at that time. His claim is that conductors leaving Manly have wheeled picked up cars by pencil and that in his opinion this work should have been done on the teletype machine by the yard clerk. We have searched the agreement in effect between this carrier and its clerks and at no place do we find any requirement imposed to compel the Carrier to teletype any or all of its wheel reports. If and when wheel reports are teletyped at any terminal or intermediate station, the operation of the teletype operations has been assigned to clerks. This is not the same as assigning the preparation of wheel reports to clerks regardless of the method used in their preparation. Since the history of this railroad, conductors have made complete, as well as supplemental, wheel reports using a pencil and can and will continue to do so without being in violation of the Clerks' Agreement. The work of operating the teletypewriter, when such is used, may have been performed by clerks, but the preparation of wheel reports by other methods is not a monopoly possession of the Clerks' craft.

To sustain the claim of Clerk Swarmer would be equivalent to ordering the Carrier to prepare all wheel reports by teletypewriter and to grant clerks the exclusive right to the preparation of such reports. Obviously this is a sweeping request for a new rule, a request which your Board cannot honor as that matter is subject to negotiation, not a grievance, arising out an existing agreement which your Board is empowered to interpret.

The procedure under dispute at Manly is not of recent origin, nor did any recognizable event trigger the claim. In conference at Manly with Division Chairman Oswald on October 16, 1952, Yardmaster McNulty stated that the method of handling trains through Manly, while different from that in vogue at other terminals, had been in operation for years and that the Clerks had made no protest or suggested any other arrangement of the work.

It is, therefore, respectfully submitted that the claim is not supported by the application Clerks' Agreement and should be denied.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization makes claim on behalf of two clerk employes for a continuing award for compensation at the punitive

rate, as set out in Claims 3(a) and 3(b). Contention is made concerning Claim 3(a) that Carrier required the Assistant General Yardmaster, Foot-board Yardmaster, Brakemen and Conductors to make train lists of cars and cars comprising trains. The Yard Clerk is advised of cars composing the trains and Yard Clerk pulls the waybills and delivers to the Conductor or Brakeman as the facts show. Such requirement on the part of Carrier, it is contended, constitutes a violation of the agreement between the parties in that such clerical work performed by Assistant General Yardmasters, Foot-board Yardmasters, Conductors and Brakemen constitutes clerical work belonging to the Clerks' Organization, as provided by the Scope and Seniority rules of the agreement between the parties. For such alleged violation it is contended employes not covered by the Clerks' agreement are permitted to perform clerical work, and for which the Organization requests a continuing monetary award until such violation is discontinued.

As to Claim 3(b), the Organization contends that Carrier violates the agreement by allowing Conductors to make pencil wheel reports where the train is ordered out before the Yard Clerk has completed the teletype wheel report, and the Conductor is required to send the report at the first station out of Manly, when he has completed the wheel report. Note both claims originate, and the alleged violations occurred, at Manly, Iowa.

Carrier contends that all the work complained of has always been performed by employes outside the Clerks' Agreement. That such practice has been in vogue since the Clerks first negotiated an agreement with Carrier in 1922 and from the inception of the first agreement no protest had been made by the Organization that such practice was objectionable. The claim before us described as 3(a) was made August 12, 1952. Claim 3(b) was made November 9, 1952. The work as alleged here was never performed by clerk employes and it is contended that the Organization does not have the exclusive right under the Scope Rule to perform all clerical work as is claimed. That the practice in vogue at Manly was never performed by Clerks, and for a period of thirty years and more no protest being made during such period, the Carrier had a right to assume that such practice was reasonable and acceptable to the Clerks' Organization.

The Scope Rule before us is general in character, and sets out the kind and class which employes of the named positions included therein usually and customarily performed at the time of the negotiation and execution thereof. Award No. 6284.

We find that at Manly Clerks have never performed the work complained of, although at other locations on Carrier's property, the reverse is true. The record does not reveal any evidence that such work complained of was ever performed by Clerks, and by the same token there is no showing in the record, nor does the Scope Rule provide that all clerical work is covered by the Agreement. It has consistently been held by this Division that the burden of proof is upon the claimant and the Organization to show beyond a reasonable doubt that the Carrier has violated the agreement. It is immaterial that some conductor employes may contend they are performing clerical work not under their agreement. In this case we give no consideration as to what employes of other organizations may state as to performing work belonging to the Clerks.

The record shows that no protest was ever made by the Organization for a period of over thirty years as the handling of clerical work at this location and is conclusive under the awards of this Board that the established custom

and practice of handling the work at Manly was never considered by the Clerks as giving them the exclusive right to the work, which they had never performed.

The work here involved is not exclusively that of the Clerks. Such can only be acquired by negotiation between the parties. This Board has no authority to make any change, by adding to or detracting from the provisions of the rules as agreed to between the parties. The claims are without merit as applied to the provisions of the Agreement and shall be denied.

As to the jurisdictional question concerning Notice to third parties, we are of the opinion that such question is moot in view of a denial of the claim on its merit.

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 in view of the foregoing Opinion, the claim shall be denied.

AWARD

Claims denied in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1959.