

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 NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station employes that:

1. The Carrier violated the Scope Rule of the Agreement between the parties to this dispute when it assigned to or permitted Conductors at Belle, West Virginia, who are not subject to the Agreement to perform clerical work covered by the Scope of the Agreement between the parties, and

2. That Mr. C. I. Joint, Yard Clerk at Belle, West Virginia, be paid a two-hour call (three hours at straight time rate) for March 17, 18, 20, 25, 26, 27, April 1, 2, 3, 7, 8, 9, 10, and 11, June 16, 22, 29, 30, July 7, 13, 14, August 10, 11, 17, 18, 20, 24, 27, and 31, 1954, on which dates clerical work coming under the scope of the General Agreement between the parties to this dispute was assigned to and performed by Conductors at Belle, West Virginia.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as representative of the class or craft of employes in which the Claimant holds a position and the New York Central Railroad Company, hereinafter referred to as the "Brotherhood" and the "Carrier" respectively.

There is in effect a Rules Agreement between the Brotherhood and the Carrier, effective September 1, 1922, modified or revised on various dates including April 1, 1923 and September 1, 1949, which the Carrier has filed with the National Mediation Board and also with the National Railroad Adjustment Board. This Rules Agreement will be considered as part

"Claimant was required to switch all cars destined to the SP&S railroad to a certain track on 13th Street. He was directed to list all cars so assembled for the use of the interchange clerk at the terminal yard office. Claimant says that this was work belonging to clerks and that he is entitled to an additional day's pay for performing the work of another craft.

"We point out that almost every employe holding a position of responsibility is required to perform work that might well be classed as clerical. He is usually permitted to perform such work so long as it is incidental to the position he occupies. Such work is a part of his assignment to the extent of his capacity to do it. When it becomes too burdensome and extra employes are required, the excess belongs to clerks. When the excess disappears, such work reverts to the occupant of the position. In the case before us, the work was incidental to the position and the other conditions mentioned were not present. Under the circumstances shown the work could properly be required of the engine foreman."

CONCLUSION: The carrier has shown that the work subject of the instant claim is strictly that necessary to be done by conductors in the performance of their own work; that it is not violative of the Clerks' agreement and, therefore, there is no merit in the claim of the organization and it should be denied.

All evidence and data set forth in this statement have been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that the Carrier violated the Scope Rule of the Clerks' Agreement when it permitted freight train conductors to do certain clerical work. On certain dates the night local freight was required to pick up from one to six freight cars at the DuPont plant at Belle and put them on a track there in proper order with other cars left by the day local, to be picked up by NT-5, and the conductor was required to make a list showing in proper order the cars to be picked up, to leave one copy of the list for the local agent and one for the conductor of NT-5, to telephone the dispatcher and roadmaster at Dickinson, about three miles away, the number of cars and their location and to pick out waybills left for him by clerks for car to be picked up and arrange them in the proper order.

It is well settled that where, as in this Agreement, its scope is defined in terms of positions rather than in terms of work, it is necessary to look to past practice, custom and tradition to determine what work belongs to employes holding those positions. Awards 615, 4827, 5404, 6032, 6269, 6284, 6758 and 7338.

Admittedly the work in question was largely clerical in nature. But the record does not show that it had in the past been performed by clerks. On the contrary it shows that lists of the kind have for years been prepared by conductors and filed or delivered as in these instances.

In numerous awards it has been held that work of this kind has traditionally and customarily been performed by conductors and is incidental to their work. Award 2674, 3909, 5112 and 8342. It is also clear that no

craft has the exclusive right to convey information by telephone. Awards 4280, 6325 and 6703.

Claimants admit that employes not covered by this Agreement may perform clerical work incidental to their ordinary duties; but there is some contention that "incidental" means necessary or essential. In Award 2674 it was said a record made by the conductor was "essential to the proper and orderly discharge of a conductor's duties"; and Award 3909 made reference both to "incidental clerical duties" and to "essential incidental clerical duties". But in neither of those awards nor in any other award cited or found has it been held or even suggested that to be "incidental" it must be "essential" or "necessary" to the other duties of the position.

At any rate, as pointed out in Award 2674, records of the kind prepared and filed or delivered by the conductors here are "essential to the proper and orderly discharge of a conductor's duties", as well as incidental to them, since it was necessary to notify the agent, the yardmaster and the conductor of NT-5 what cars had been left to be picked up, and where they were.

The conclusion is inescapable that the clerical work in question is of the kind which past practice shows to have been traditionally and customarily performed by conductors, and that it is incidental to their duties. Consequently no violation has been shown.

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 Employee involved in this dispute are respectively Carrier and Employee 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of April, 1960.