

Award No. 9477

Docket No. CL-8542

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William E. Grady, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY**

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

1. Carrier violated the Clerks' Rules Agreement at Sioux City, Iowa on January 20 and 23, 1955 by assigning clerical duties to an employe not covered by the Clerks' Agreement.

2. Carrier shall compensate employe Martin Conway, regular occupant of Position No. 30, Yard Clerk at West Yard Sioux City, Iowa for a call on January 20, 1955 and January 23, 1955.

EMPLOYEES' STATEMENT OF FACTS: Employe Martin Conway is regularly assigned to Position No. 30, Yard Clerk at West Yard Sioux City, Iowa from 3:30 P. M. to 11:30 P. M. Wednesday through Sunday with Mondays and Tuesdays as assigned rest days. His rate of pay is \$13.95 per day. See Employes' Exhibit "A" and "B".

Included among other duties assigned to and performed by the occupant of Position No. 30, is the work of writing up trains.

On January 20th and again on January 23rd, 1955 employe Conway was required to service caboose for Train No. 123. During his absence from the office performing that work, the Yardmaster on duty performed the clerical work of writing up trains.

Time slips covering each violation were presented by employe Conway and were declined by Superintendent A. C. Novak.

The claim was subsequently handled on appeal with Mr. C. P. Downing, Assistant to the Vice President who likewise declined payment of the claim.

Conference has been held thereon and no settlement reached.

There is no basis for a claim of call in behalf of Employee Conway on January 20, 1955 and January 23, 1955 and we respectfully request that the claim be denied.

(Exhibits not reproduced)

All data contained herein has been submitted to the employees.

OPINION OF BOARD: This dispute concerns performance of work as between a Yard Clerk and a Yard Master. It is asserted that the Carrier violated the Agreement in that, on January 20 and 23, 1955 at West Yard, Sioux City, Iowa, the Yard Master performed duties of Yard Clerk Martin Conway, herein called "Claimant". A call is asked for each day. Notice has been given to the Railroad Yardmasters of America under Section 3, First (j) of our statute.

On each day in question the Yard Master, while Claimant was coaling cabooses, spent some fifteen minutes writing up trains. Claimant, except for these two intervals, wrote up trains on the days in question and on his other days of work. That Claimant routinely did this work is underscored by the minimal performance of it by the Yard Master. The work was part of and substantially exclusive to Claimant's position. As to whether the work was incidental to the position of the Yard Master, it is enough to say that the term imports more than the isolated performances here present. So far as concerns tradition and kindred considerations, these are useful guides. Their weight, however, is relative rather than constant. We do not here deal with broad problems of allocation or ebb and flow of duties, but only with the immediate issue. The facts at hand suffice for its disposition.

It is argued that the Yard Master's activity was necessary to maintain schedules; but it does not appear that an emergency, as distinguished from urgency, existed. There are assertions pro and con, as to whether coaling was a task of Claimant's job; but only these two instances appear. We therefore direct our attention to the source of this dispute, namely, the write-ups by the Yard Master.

Finally, it is argued that the work involved amounts to so little, that the Carrier had the right, inherent or occasioned, to do what he did. We do not disregard accommodation of duties which circumstances reasonably may require; nor do we foreclose exercise of appropriate discretion; but on the record before us, the argument proves too much.

We shall sustain the claim.

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 there was a violation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1960.