

Award No. 9768

Docket No. CL-9567

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

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

THE VIRGINIAN RAILWAY 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 Clerical Agreement dated April 15, 1946.

1. When on October 1, 1955, the Carrier (The Virginian Railway Company) turned the work of checking outbound trains at Roanoke and Elmore Yards over to Conductors and Trainmen after being notified by the Division Chairman at Roanoke that it was a violation of the Clerical Agreement.

2. That the Carrier (The Virginian Railway Company) shall now be required to compensate J. W. Binkley, for the following days in October 3, 6, 11, 14, 16, 19, 22, 24, 27, and 30, and to compensate the Claimant or his successors a day's pay at the rate of yard checker at Roanoke and Elmore Yard for each additional day subsequent to October 30, 1955, on which such violation occurred until the Carrier ceases such violation of the agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1955, instructions was issued to the Clerical Employees at Roanoke and Elmore Yards to check certain outbound trains and furnish the Conductors with a check. It has always been the duties of the Clerks to check all inbound trains at all terminals on the Virginian Railway. The trains outbound of the terminals on the Virginian Railway to be checked by the Clerks are as follows: At Roanoke, the first instructions were to check all Westbound trains and furnish the conductors with the check, these instructions were changed and new instructions were put out for the clerks to check all time freights both ways. At Elmore, the clerks were instructed to check Gilbert Runs, all Hill Runs, all Roanoke Run or all eastbound trains, all Princeton turns and all time freights west.

The first part of September 1955, the General Chairmen of the Conductors, Trainmen and the Clerks met with Mr. G. M. Cornell, Assistant to President of the Virginian Railway, in his office at Norfolk, Va., to discuss this matter. At this conference the General Chairman of the Conductors pointed out to Mr. Cornell, this was not their work and that it was showing discrimination against the Conductors for one Conductor to have to check his train at one place and to have Clerks to check the same train

"In Award 2674 a situation in some respects similar to this one was considered by this division. There the Organization was seeking to have positions established to perform the type of work involved here and to take over the car checking functions of Road Conductors. The claim was denied. The portion of the opinion having pertinence here is that which makes clear that clerks have no right to claim for themselves the incidental duties of Road Conductors."

In the case covered by Award 3909 the Scope Rule is almost identical to Rule 1 of the Virginian Clerical Schedule of April 15, 1946, which covers claimants in this case except that the Virginian rule requires that there must be four hours of clerical work instead of three hours clerical work to make a clerical position. It does not take an individual road conductor more than thirty minutes to check his train even when he walks his train and when he does it by noting the cars as the train pulls out the yard it does not take any additional time. There is thus no basis in the Scope Rule to support the claim in this case. Furthermore, Award 3909 confirms the position that the road conductor, who is held responsible for handling the proper cars in his train, has the right to check his train and such checking is merely an incidental part of his duties.

In summary of its position the Carrier asserts:

1. No work was transferred from yard clerks to conductors at either Roanoke or Elmore Yards on October 1, 1955.
2. No complaint as to work required of conductors at Elmore has been progressed on the carrier.
3. The claim of complainant Binkley for October 1955 was never appealed by the Division Chairman as required by the time limit on claims rule.
4. Road conductors have always been required to list their train in their train record book, Form 208, and this has never been done by clerical employees. It is an incidental part of his responsibility for his train and the record of its performance.
5. Compliance with the employees' request would merely mean that in cases where the yard forces had not completed their work on a train at the time the conductor reports the train must be delayed until the yard completes its work. The yard forces would not compile any information they do not now compile and road conductors would continue to do what they now do.

All information in support of Carrier's Position in this case has been furnished representatives of the Employees.

OPINION OF BOARD: The work involved in this dispute has to do with Conductors checking the cars in their outbound trains from Roanoke Terminal, Virginia.

It is the Conductor's responsibility to record correctly the record of his trip in his train book and recording or checking is for his own benefit and necessary to his primary duties. He makes his check of cars on "Freight Conductors Car and Tonnage Record Book" and from this is made the "Switch List" that is left at destination.

Road conductors have always prepared these forms as necessarily incidental to their primary duties.

Wheel reports are prepared by clerks and have never been prepared by Conductor at this location.

Therefore this claim should be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1960.