

Award No. 10179

Docket No. CL-9971

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

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

**LAKE SUPERIOR TERMINAL & TRANSFER
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 rules of the current Agreement:

(1) By requiring Yardmasters and/or Roundhouse Foremen at Superior, Wisconsin, occupying positions outside the scope of the Clerks' Agreement with Carrier, to perform work of calling crews and marking up Switchmen's Board 4:00 P. M. to 7:00 A. M., daily from Sunday, February 5, 1956 through April 25, 1956, when the rule violation was corrected.

(2) As a penalty for the rule violation that:

(a) Joseph Eibon, Second shift Yard Clerk at Belknap Street Yard Office, be allowed an additional day's pay at rate attached to his regular position of Yard Clerk for each day of the work week, Tuesday through Saturday, commencing Tuesday, February 7 through April 25, 1956.

(b) Frank L. Holton, Relief Yard Clerk and/or Relief Storekeeper and Master Mechanic's Clerk at Belknap Street Yard Office be allowed an additional day's pay at his regular rate of pay for Sunday, Monday and Tuesday, February 5, 6 and 7, 1956 and the Sundays, Mondays and Tuesdays of each week thereafter through April 25, 1956.

(c) Robert Norberg, Relief Yard Clerk at Belknap Street Yard Office, be allowed an additional day's pay at his regular rate of pay for Monday, February 6, 1956 and the Mondays of each week thereafter through April 25, 1956.

(d) Robert Charbonneau, Storekeeper and Master Mechanic's Clerk at Belknap Street Yard be allowed an additional day's pay at his regular rate of pay for Sunday,

February 5, 1956 and each and every regular work day of his assignment through April 25, 1956.

EMPLOYEES' STATEMENT OF FACTS: This claim originates in the yard of the Lake Superior Terminal and Transfer Railway at Superior, Wisconsin. Yard Clerks were assigned in this yard continuously. Their work consists of regular yard clerk work such as booking cars and manifesting other various yard clerks' work which is not involved in this claim but part of their assignment had been calling crews and marking up the board. There is also assigned Storekeeper and Master Mechanic's clerk that is involved in this claim account this position had been calling engine crews prior to the violation.

Sometime prior to February 5, 1956 this work was removed from the Agreement and performed by yardmasters. As the file will show, on April 4, 1956 claim was filed in behalf of the employees involved in this claim because yardmasters and roundhouse foremen were taking over this work of handling the board and calling crews between the hours of 4:00 P. M. to 7:00 A. M. During the other eight hours of the day, this work was performed exclusively by clerks. The record will show that after the claim was filed on April 4, 1956 for February 5, 1956 which was 59 days prior to the date claim was filed, which is permissible under the cut-off rule, the Carrier on April 24, 1956 posted the following general notice to yardmasters, roundhouse foremen and yard clerks:

**"THE LAKE SUPERIOR TERMINAL & TRANSFER RAILWAY
COMPANY**

**GENERAL NOTICE TO YARDMASTERS, ROUNDHOUSE
FOREMEN AND YARD CLERKS:**

The following are the arrangements and instructions in connection with the calling of switchmen, switchtenders, engineers, firemen and hostlers before and after the regular mark up time of the respective crew boards;

Yard Clerk at Belknap Street Yard office, working 4:00 P. M. to 12 Midnight, will call all men, both enginemen and switchmen. The Yardmaster and Roundhouse foremen, on duty, will accept lay offs and notify the yard clerk of the man, or men, to call. It must be understood that the yardmaster and Roundhouse foreman, on duty, are responsible for the laying off of any employe and giving the instructions as to whether, or not, layoffs can be granted.

Roundhouse Foremen, working between the hours 11:00 P. M. and 7:00 A. M. will notify the Winter Street Yard Clerk on duty, working 11:00 P. M. to 7:00 A. M. of any lay offs on the enginemen's board and instruct him to call the proper man, or men. When there is no Yardmaster on duty between the hours of 11:00 P. M. and 7:00 A. M., the Roundhouse Foreman will accept calls from switchmen, switchtenders, enginemen and hostlers and he will instruct the Winter Street Yard Clerk on duty, who to call.

This notice will serve as instructions to the Yard Clerk on duty 4:00 P. M. to 12 midnight at the Belknap Street Yard Office and the Yard Clerk on duty 11:00 P. M. to 7:00 A. M. at the Winter Street Yard office.

have been employed for more than a few minutes. Even if the Clerks' Schedule had been violated, which certainly it had not, the claimants would not be entitled to more than they would have received had they been used for such service.

For the foregoing reasons, the carrier respectfully asks that this claim be denied.

All of the evidence and data contained herein have been presented to the representatives of the employees concerned.

Exhibits not reproduced.)

OPINION OF BOARD: In this case, the Organization alleged that the Carrier violated the rules of the Agreement by requiring Yardmasters and Roundhouse Foremen at Superior, Wisconsin, to call, on the dates specified in the Statement of Claims, engine crews and mark up switchmen's board from 4:00 P.M. to 7:00 A.M. during the period from February 5, 1956 through April 25, 1956.

The Carrier, a small switching Company with its operations confined to the City of Superior, Wisconsin, has two appeals officers — the Superintendent and the President.

Inasmuch as there are two separate disputes involved we will label them Claim A and Claim B. Claim A is on behalf of Claimants Joseph Eibon, Frank L. Holton and Robert Norberg; Claim B is on behalf of Claimants Robert Charbonneau and Frank L. Holton. The Board will, of course, treat the two disputes separately.

First we will resolve the dispute involving Claimants Eibon, Holton and Norberg.

On April 4, 1956, the Organization filed its initial claim which the Carrier denied on May 3, 1956. Subsequently, the Organization notified the Carrier's Superintendent that his decision was unacceptable. This was done within the contractually prescribed 60 day period. However, the Organization failed to appeal to the Carrier's President within the prescribed 60 day period. The pertinent rule involved is Article V, Section 1(b) of the August 21, 1954, Agreement part of which reads as follows:

"(b) If disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, . . ."

Because of the Organization's failure to comply with the time limit provisions for processing claims — we must dismiss Claim A.

Now let us turn to Claim B which involves Claimants Robert Charbonneau and Frank L. Holton. Here again we find that the Organization failed — after the initial claim was denied — to progress the claim to the next higher officer within the 60 day period. However, the Carrier volunteered to waive the Organization's violation of the time limit Agreement, and accordingly, Claim B is properly before this Board on its merits.

Claim B involves the calling of switchmen during the hours when no Yard Clerks are on duty. Switchmen work on a daily mark-up basis. The Switchmen's Board closes each day at 3:00 P. M. and the daily mark ups are handled by 1st shift clerks. Assignment changes after 3:00 P. M. are handled by Yardmasters. The work herein involved is of a very minor and incidental nature and involves only a few minutes or less of Yardmasters' time.

The Yard Clerks contend that only Yard Clerks may call switchmen or enginemen. Consequently, the burden of proof is on the Organization and the latter must prove that it has a right to the work in question.

The Organization did not refute the fact that ever since this Carrier has been in operation, Yardmasters and roundhouse foremen have called crews and made appropriate corrections on the switchmen's and enginemen's boards during the periods when Yard Clerks were not employed and on duty. Neither did the Organization refute the Carrier's claim that prior to 1953 the work of calling crews was done exclusively by Yardmasters.

Before the Organization can have any support for its position or establish that a violation of the Agreement occurred, it must first establish that the work in question had been assigned to Yard Clerks under the Agreement. This the Organization has failed to do. Consequently, there is no merit to the Organization's petition and Claim B must 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 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 Carrier did not violate the Agreement.

AWARD

Claim A dismissed on procedural grounds.

Claim B denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1961.