

Award No. 10328

Docket No. CL-9624

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

**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 when it assigned work in connection with weighing cars at Madison, Wisconsin to a switchman who is an employe not covered thereby.

2. Carrier shall now be required to compensate Employes Mathias Rommelfanger for five hours and twenty minutes at the time and one-half rate of his regular yard clerk position for Sunday, June 24, 1956 and Sunday, July 22, 1956.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains three yard clerk positions at Madison, Wisconsin. Prior to June 21, 1956 those positions were assigned to work as follows:

Position No. 3—3:59 P. M. to 11:59 P. M. Monday through Friday with rest days of Saturday and Sunday.

Position No. 2—7:59 A. M. to 3:59 P. M. Tuesday through Saturday with rest days of Sunday and Monday.

Position No. 4—11:59 P. M. to 7:59 A. M. Thursday through Monday with rest days of Tuesday and Wednesday.

The Sunday and Monday rest days of Position No. 2 and the Tuesday and Wednesday rest days of Position No. 4, which are 7-day positions, and the Saturday rest day of Position No. 3, which is a 6-day position, were included within a regular relief position. Position No. 3 is not filled on Sunday.

Effective June 28, 1956 the assignments of the above positions were changed and assigned as follows:

Position No. 2—7:00 A. M. to 3:00 P. M. Monday through Friday with rest days of Saturday and Sunday.

on duty, so the use of the switchman was in accordance with the "present practice" existing when the rule was adopted.

In regard to the switchman weighing a car at approximately 4:45 P. M. on Sunday, July 22, 1956 at Madison, which the employees also contend was a violation of the Agreement, the Carrier should like to direct attention to the fact that there was no clerical employe on duty in the yard in which the scale is located at Madison, and in the absence thereof the use of the switchman in that case was also strictly in accordance with the provisions of Memorandum No. 3.

In presenting this claim the employees have cited Rules 1 (a) (e), 2, 3, 4, 28, 32(f), 33(a) (b), 34(a) (d) and Memorandum of Agreement No. 9, however, in the presence of Memorandum No. 3 and the existing facts none of the aforementioned rules or Memorandum No. 9 are applicable in the instant case.

The fact remains that Memorandum No. 3 provides for the practice of using switchmen, yardmasters and yard clerks to weigh cars at Madison, Wisconsin to remain in effect except that in those cases where a clerical employe is on duty in the yard in which the scale is located, the clerical employe will weigh the car or cars. The Carrier has shown that in neither case was there a clerical employe on duty in the yard in which the scale is located at Madison, therefore, the use of the switchmen to weigh the cars was in accordance with the "present practice" which was to remain in effect and the provisions of Memorandum No. 3 and, therefore, entirely proper. There was no violation of the Agreement.

Memorandum No. 3, as we have said, has been in effect since January 16, 1946. During the period of approximately ten years that agreement has been in existence there have been hundreds and hundreds of cases where switchmen, yardmasters, operators, agents and trainmen (outlined in the "present practice" in Memorandum No. 3) have weighed cars in those cases where a clerical employe was not on duty in the yard in which the scale was located and this is the first claim that has been progressed under Memorandum No. 3. This fact is not only an indication of the proper application of Memorandum No. 3 but of the attempt which the employees are now making to modify that agreement by board award.

The Carrier respectfully requests that this claim be denied.

All data contained herein has been presented to the employees.

OPINION OF BOARD: There was no clerk on duty in the Madison yard on the dates of claim. Memorandum of Agreement No. 3 is controlling. A similar claim has been decided by this Board concerning the same parties and Rule (Award 9971). We will follow that Award.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1962.