

Award No. 11082
Docket No. CL-10287

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

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

(A) Carrier violated and continues to violate the controlling agreement between the parties at South 44th Street Yard, Chicago, Illinois, when effective November 26, 1956, they abolished the Delivery Clerk position and removed clerical work consisting of checking industries, from the 23rd Street to the 57th Street Yard, which work had theretofore been performed by Delivery Clerk M. S. Bettenhausen, from under the scope and operation of the clerical Agreement and assigned such work to employes covered by an Agreement of another craft and class.

(B) That clerical work of checking the industry between 23rd Street and 57th Street, Chicago, which is being performed by the Switchmen, employes of another craft, be returned to the clerical position.

(C) That Carrier be directed by appropriate order to pay clerk Martin Bettenhausen five and one-half (5½) hours daily at time and one-half rate, six (6) days per week, Monday through Saturday, at the rate of \$368.49 per month, the rate of the position abolished, plus general increases applied to clerical positions since that date, effective November 26, 1956, until the violation has been discontinued.

EMPLOYEES' STATEMENT OF FACTS: The following instructions were issued by the Local Agent on November 19, 1956:

“Chicago, Nov. 19, 1956
File: PR ME-38

“Mr. Martin Bettenhausen:

“Effective November 26, 1956, your position as Delivery Clerk is hereby abolished. Kindly arrange to exercise your seniority.

It appears from reviewing the division file that no protest has ever been made since 1942 because switch foremen prepare CT-117 reports and the use of these forms in the preparation of demurrage reports is no different now than it ever has been.

I cannot agree with you that this is a violation of your Agreement and your claim is respectfully denied.

Yours truly,

/s/ G. E. Mallery

cc - Messrs. G. J. Mulick
B. F. Wells
G. H. Voss"

In view of the fact that this claim was not progressed to your Board, it is evident petitioner did not feel that this was violative of the Scope Rule of their Agreement.

We wish to specifically call your attention to Superintendent Orlomoski's letter of December 30, quoted above, particularly that part reading:

"... These forms were then turned in to the head yard clerk who obtained information from them to properly assess demurrage. The same thing applied to the switch crews working out of 44th and 12th Streets and South Chicago." (Emphasis ours.)

Mr. Orlomoski worked in the capacity of switchtender, switchman, switch foreman, yardmaster, Assistant Trainmaster, Assistant Superintendent on the Chicago Terminal Division from March 21, 1924 until he was appointed Superintendent on February 1, 1952 of the Chicago Division, and obviously is thoroughly familiar with this phase of the work.

Based on the facts as they exist in this case, such facts being related to the applicable Clerks' Agreement, the Carrier respectfully requests your Honorable Board to deny the employes' claim in its entirety.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's Representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to November 26, 1956, Carrier maintained at its 44th Street Yard in Chicago, a position of Delivery Clerk, of which Claimant was then the incumbent. The major portion of the assigned duties of this position consisted of checking cars on tracks of industries between 23rd Street and 57th Street. Effective on the above date Carrier abolished the position. All the duties except those of checking cars were transferred to higher rated clerical employes and, according to Carrier, the duty of checking industry tracks was discontinued.

The Petitioner contends that when Carrier abolished the Delivery Clerk's position, it did not discontinue the duties of checking industry tracks but actually transferred this work to switch foremen in violation of the Scope Rule of the Agreement. The Carrier denies that switch foremen are checking industry tracks and insists that this work, formerly performed by Claimant, has been discontinued.

The Scope Rule in this case is of the general type found in most agreements. It does not spell out the work to be performed by the classes of employes covered. In order to determine whether particular work belongs to the Clerks, we must look to tradition, custom and practice. There seems to be no doubt, however, that the work of making track checks of industries at the 44th Street Yard has been traditionally performed by the clerks. But this does not determine the issue before us. Carrier stopped the checking of industry tracks by clerks. The question on which this case turns is whether this work or any substantial part of it was transferred to the switch foremen. In order to sustain the present claim, Petitioner has the burden of proving that switch foremen are actually performing the work of checking industry tracks. In the judgment of the Board Petitioner has not met this burden.

While Petitioner asserts that switch foremen are performing the work formerly performed by the Delivery Clerk, it has no evidence to support this contention. From the letter of the General Chairman appealing the claim and from Petitioner's submission, it is clear that the above assertion is based upon the fact that the demurrage reports formerly compiled from Form CT-42A, prepared by the Delivery Clerk, are now made up from the data on Form CT-117, prepared by the switch foremen. From this, Petitioner would have us draw the inference that switch foremen must be doing the same work, i.e., checking tracks, formerly done by the Delivery Clerk. The inference is not warranted. The evidence shows that Form CT-117 is a record prepared by switch foremen showing the cars they handle in their trains, i.e. those they pick up and/or set out on industry tracks. Petitioner has offered no evidence, showing that switch foremen are collecting any data on Form CT-117 which they were not including prior to the abolition of the Clerk position.

From all that appears in the record, Carrier is merely taking the data supplied by the switch foremen on Form CT-117 (the same type of data as appeared on the Form prior to November 26, 1956), and using it for keeping up with the cars on various industry tracks and compiling demurrage reports. Carrier apparently decided that it could get along without the data formerly supplied on Form CT-42A prepared by the Delivery Clerk from his check of industry tracks. Nothing in the Agreement prohibits Carrier from utilizing the data from Form CT-117 for preparation of the reports.

While it appears that the switch foremen are doing some work of a clerical nature in preparing Form CT-117, showing the cars placed and pulled from the various tracks, this is incidental to their work. In this connection, Petitioner does not question the use of this form to the extent necessary for switch foremen to perform their duties. Furthermore, the record clearly shows that Form CT-117 was in use by the switch foremen at the 44th Street Yard prior to November 26, 1956.

From the foregoing, the Board concludes that the Petitioner has failed to show that the switch foremen performed any different work subsequent to November 26, 1956, than they performed before, and therefore, that no violation of the Agreement has been established.

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 Employes involved in this dispute are respectively Carrier and Employes 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 1963.