

Award No. 11864
Docket No. CL-11715

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

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

THE ANN ARBOR RAILROAD COMPANY

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

(1) Carrier violated and continues to violate the Schedule for Clerks in requiring or permitting Yardmasters at Owosso, Michigan to perform duties of calling train and engine crews, outside the assigned hours of yard clerks, and which duties are assigned to yard clerks Charles Spencer and Edwin Swartz and performed by them during their daily hours of assignment.

(2) Yard clerk Charles Spencer shall be compensated at overtime rate on the basis of a call, under Rule 4 Paragraph C, for each work day of his assigned work week, Tuesday through Saturday, rest days Sunday and Monday, effective with October 21, 1958 and all subsequent dates thereto. This claim to continue in force and effect until the violation has been corrected.

(3) Extra yard clerk Edwin Swartz shall be compensated at overtime rate on the basis of a call, under Rule 4 Paragraph C, for each of two days, Sunday and Monday of each work week, effective with October 26, 1958 and all subsequent dates thereto. This claim to continue in force and effect until the violation has been corrected.

NOTE: Dates and extent of the violation to be determined by a joint check of the payroll and other necessary records.

EMPLOYEES' STATEMENT OF FACTS: The yard clerk position in question is a seven (7) day assignment. The assigned work week of yard clerk Charles Spencer, the regular incumbent, is Tuesday through Saturday, rest days Sunday and Monday, hours of assignment 5:30 P. M. to 1:30 A. M.

Extra yard clerk Edwin Swartz is assigned to relieve yard clerk Charles Spencer on Sunday and Monday of each week, with the same hours of assignment.

The yard clerk duties that are required and necessary and performed by the yard clerks between the hours of 5:30 P. M. through 1:30 A. M., each day

This Carrier has not by agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees granted clerks the exclusive right of calling train and engine crews nor has it agreed with that organization to provide payment for a "call" when yardmasters or any other employees perform that work.

In order to sustain this claim this Board must ignore the limitations upon its authority and the processes provided by law for changing agreements relating to rates of pay and working conditions for railroad employees and thus deprive the persons who own this company of property without due process of law.

This Board has no jurisdiction to supply that which the Schedule for Clerks does not contain.

The alleged claims presented in the Employees' ex parte Statement of Claim are not supported by the rules of the Schedule for Clerks and should be dismissed, and if not dismissed, denied.

The carrier affirmatively states that the substance of all matters referred to herein has been made the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this dispute are not in issue. The record shows them to be as follows: Yard clerks have been employed at Owosso, Michigan, only when the clerical work in the Yard Office was too great in volume for the Yardmaster to perform along with his other duties; at least since January 1944, yard clerks have never been employed around the clock at Owosso; the system wide practice at Owosso and other points since 1939 has been for yardmasters to call train and engine crews when clerks are not on duty. Despite knowing all the above points when new schedules were negotiated by the parties in June 1942 and in 1957, Petitioner made no request to eliminate the existing practice in this respect.

The Petitioner takes the position that under Rule 1 of the Agreement the duties of the car clerks include calling train and engine crews during the hours of their assignment and that the Carrier is in violation of the said Agreement in either requiring or permitting yardmasters to call train and engine crews outside the hours of the clerks' assignments.

This Board has many times held that in order for this type of claim to be sustained it must be shown that the work of calling train and engine crews is exclusively reserved to the clerks and to the exclusion of other employees. See Awards 11466, 10515, 9963, 9565, 9551, 9609, 9261, 8065 and 6359. There would not appear to be any Rule of the current Agreement between the parties that confers exclusive rights on clerks to perform this work. To the exact contrary the undisputed facts are that the Yardmasters on this property have always and for many years performed the work of calling train and engine crews at Owosso. These duties have always been performed by the said Yardmasters during the hours when no clerks are on duty.

The facts themselves which are not disputed by the Petitioner demonstrate conclusively that the work in question does not exclusively belong to the

Clerks and they have not performed it to the exclusion of all other employees. In Award 10515 (Dolnick) the rule is succinctly stated as follows:

"It is not enough that the Organization show that employes covered by the Agreement have performed similar work. The Organization must show that such employes have exclusively performed such work." Also see recent Awards, 11621, 11598, 11495 and 11081.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Carrier did not violate the Agreement.

AWARD

The claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.