

Award No. 12381
Docket No. CL-11714

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

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

(a) The Carrier violated the current Clerks' Agreement, when it abolished three Car Checker positions and the Relief Clerks positions assigned to relieve the occupants of these three positions on their rest days, effective January 27, 1959, and concurrently therewith removed the work of operating the pneumatic tube system in the North Checking Tower, Englewood Yards, during certain periods of each day thereafter from the scope of the Agreement and turned said work over to Train Conductors working under the scope of another agreement; and when on April 29, 1959, it transferred three Car Checker positions and the relief on said positions from the South Checking Tower to another work location in the Englewood Yards and concurrently therewith, removed the work of operating the pneumatic tube system in the South Checking Tower, during certain periods on this date and each day thereafter, from the scope and operation of the Agreement and turned said work over to Train Conductors working under another agreement.

(b) That the Carrier, by appropriate order of the Board, be required to return all of the work of operating the pneumatic tube system in the North and South Checking Towers now being performed by Train Conductors to the scope and operation of the Clerks' Agreement.

(c) And that Clerk E. G. Gay, who stood first out on the Englewood Clerks' Extra Board for call to work on the 7:00 A.M. to 3:00 P.M. shift on January 28, 1959, be paid a day's pay at the then current rate of pay of Car Checker, for January 28, 1959; and that each clerk listed in Appendix "A" attached hereto, all of whom stood first out on the Extra Board for the shift on each date shown

opposite their respective names, be paid a day's pay at the appropriate rate of pay of Car Checker for each such date when Train Conductors operated the pneumatic tube system in the North or South Checking Towers.

EMPLOYEES' STATEMENT OF FACTS: For many years the Carrier operated a flat switching yard at Houston, Texas, known as Englewood Yards. During the year 1954, a new gravity yard was completed and placed in operation at the same general location, and is now commonly known as the Englewood Gravity Yards.

Among the buildings and other installations constructed in the new yards is a Yard Office located between the main line and the crest of the hump and two checking towers located approximately one and one-half miles west of the Yard Office. The North Checking Tower is located in what is known as the North Unit of the yards, while the South Checking Tower is located in what is known as the South Unit of the yards. Employees' Exhibit 2 pictures the lower portion of one of these towers, the waybill chute, Conductor's shanty, and a portion of the pneumatic tube system.

Prior to the construction of the new gravity yard, all of the train Conductors on the outbound trains dropped off their cabooses at the Yard Office, picked up the wheel reports and waybills for their train from the counter, where they had been placed by a Clerk, went into the Telegraphers' Office, obtained their train orders, signed the train register tickets and departed. The Conductors on the inbound trains dropped off their cabooses, deposited the waybills for the trains on the counter, where they were picked up by a Clerk, then went to the Telegraphers' Office, signed the Train Register Ticket and proceeded to Hardy Street with their caboose where they went off duty. With the completion of the new Yard Office and transfer of all of the Clerks except those assigned to work in the West end of the yards, Telegraphers, etc. to the new Yard Office the Conductors on the trains entering the yards from the East or departing the yards to the East were instructed to obtain and deliver their wheel reports and waybills to the Clerks and receive their train orders from and deposit their train register tickets with the Telegraphers at the new Yard Office. The Conductors on the trains entering the yard from the West or departing the yard to the West from the North Unit were instructed to continue obtaining their wheel reports, waybills and train orders at the old Yard Office and deposit their waybills and train register tickets at this same location, while the Conductors on these trains departing from the South Unit were instructed to obtain their train orders, wheel reports and waybills from a Clerk at the South Checking Tower and the Conductors on the inbound trains arriving at the South Unit were instructed to drop their train register tickets and waybills in the chute outside the South Checking Tower. Sometime later, when the North Checking Tower was completed, the Conductors arriving and departing the yards from the North Unit were instructed to obtain their train orders, wheel reports and waybills for the outbound trains from a Clerk at the North Checking Tower and on the inbound trains arriving at the North Unit they were to drop their train register tickets and waybills in the chute just outside the North Checking Tower. Until a pneumatic tube system was completed and placed in operation between the Yard Office and these Checking Towers, the train orders and waybills for the outbound trains departing from the yards to the West were delivered from the Yard Office to the Conductors at the old Yard Office or these towers by Clerks or automobile Messengers. The waybills from the inbound trains entering the yards from the West and the Conductor's train register tickets were delivered to the Yard Office in the same manner.

9. Special Board of Adjustment No. 41, in Award No. 538, denied claims of conductors involving identical principles right here on this Carrier finding that the service of the conductor was in connection with user's own duties.

10. Carrier has shown that ebb and flow principle alone dictates the denial of the instant claim.

11. The "work" is trivial. Special Board of Adjustment No. 41, on this Carrier, found it was "negligible" and incidental to the conductors' duties. This dictated a denial award, as did Award 4063, Third Division, Page 31 hereof.

12. Clerks would now be contending that Award 538 of Special Board of Adjustment No. 41 controlled if the claim had been sustained. They referred their claim to the Third Division after the BofRT (conductors) lost their identical claim here on this Carrier.

13. The essential and integral components of the car checkers' positions were consolidated and merged with other positions under the Clerks' Agreement and continued to be performed by employes under the Clerks' Agreement. Only the microscopic fragment of work involved here reverted to conductors as incidental to their duties as evidenced by Award No. 538, Special Board of Adjustment No. 41, right here on this Carrier. Conductors perform the same character of work all over the railroad. The Board has consistently denied claims under the same circumstances.

14. The claim is vindictive and seeks harsh penalties out of all proportion to any loss that can be shown. There is no penalty rule in the agreement and the Board has held that where no penalty rule is involved, no penalty may be implied or assessed.

15. Aside from all other considerations the language of Award 2932, quoted at page 32, points to denial of this claim, which, if carried out to its logical implications, would require two employes for the involved minute alleged operation, one to allegedly operate it while the other watches him.

CONCLUSION

The Carrier asserts the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts giving rise to the instant claim are uncontroverted. The Organization contends the current agreement was violated when the Carrier required the Conductors to receive their waybills from the Yard Office at Englewood via pneumatic tube, or when Conductors deliver their waybills to the said Yard Office via pneumatic tube. The issue, therefore, is the insistence of the Clerks that the handling of waybills in the manner described is the exclusive work of the Clerks under the Scope Rule.

The Scope Rule in the Agreement applies over the Carrier's entire system, and in the absence of specific provisions in the rule reserving the work exclusively to the Clerks, it is incumbent upon the Claimants to prove, by a preponderance of the evidence, that the work accrued to them by virtue of custom, tradition and past practice. We find the Claimants failed to meet this burden.

For the reasons set forth, we must conclude the claim lacks the merit necessary for a sustaining award and must be denied.

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 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 March 1964.