

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

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

THE TOLEDO TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4864) that:

(a) Carrier violated the current agreement on Sunday, December 20, 1959, and Sunday, December 27, 1959, when it permitted or required a Yard Conductor and an employee of the Libby-Owen-Ford Glass Company to perform work that is regularly performed by an employee covered by the Agreement, Monday through Saturday.

(b) The Carrier shall now be required to compensate the regular employee, Mr. Harry Struck, a day's pay at time and one-half for these two Sundays.

EMPLOYEES' STATEMENT OF FACTS: At Rossford Yard, the following tracks are located, Ford Lead, Fence Track, and Tracks 1, 2, 3 and 4. The Fence Track, and Ford Lead are owned and maintained by Libby-Owen-Ford Glass Company. Tracks 1, 2, 3, and 4 are owned and maintained by the Toledo Terminal Railroad. Cars for Libby-Owen-Ford Glass plant and the Larowe Mill plant of General Mills are placed on any of the above named six tracks.

There is in effect a Yard Clerical position at Rossford Yard, this position is a 6-day position, working Monday to Saturday. Claimant Struck is assigned to this position, Monday to Friday, and on Saturdays it is filled by a Relief Clerk. The position does not work on Sundays.

The duties assigned to this position as bulletined on this property are as follows:

"Make and maintain the required records for cars received and delivered in interchange. Furnish requested information to patrons, connecting lines, Toledo Terminal Yardmaster, Agent, etc., for any car when such information is available."

The claimant Monday to Friday, and Relief Clerk on Saturdays checks the yard, furnishes the Yardmaster a line up of the cars, and where they

In addition, your Board in many past decisions has declined payment of time and one-half when no service was rendered as in these instant cases, therefore has no merit and should be denied for this reason if for none other.

A copy of the Agreement between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and this Carrier is on file with your Board.

We respectfully request your Board to deny these claims.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 20 and 27, 1959, both days being Sunday, a claim was presented by the Claimant for time and one-half for eight hours for each of the above days for failure to call Claimant for a clerk's assignment. The Claimant was regularly assigned 7:00 A.M. to 3:00 P.M., Monday through Friday, relief days Saturday and Sunday, to a Yard Clerk position as Rossford Yard, Rossford, Ohio. On the above dates an Industry Clerk check tracks and prepared a switch list of cars wanted, by his Company, for loading or unloading at the plant. This switch list on these dates was turned over to the Yard Conductor. On these dates the Yard Clerk was not called for service nor was his relief called for services which is the basis for the claim.

It was the contention of the Claimant that this work performed by the Industry Clerk on Sunday was in violation of the Scope Rule. It was Clerks' work. The Claimant performed the work from Monday to Saturday so they should also have been called to perform the work on Sunday. This work is covered by the Scope Rule and reserved to those employees for whose benefit the Agreement was consummated for, the Claimant herein.

The Carrier in denying the claim alleged that the Industry Clerk performed this work on Monday through Saturday, that is, checked tracks and prepared the switch list which he then turned over to the Yard Clerk or Yard Conductor. In addition this work had been performed in this manner throughout the week and on Sunday if necessary for years and no claim had been made on behalf of the Yard Clerk. Furthermore, this practice of holding cars on storage tracks and having Industry Clerks perform this type of work is a well known and long established custom and practice at several of the larger industries on this property, as well as throughout the railroad industry. These allegations by the Carrier in the record were not denied by the Claimants.

The question to be resolved in this dispute is: Does this method of work performed by the Industry Clerk at this location violate the Scope Rule of the Agreement?

The Scope Rule is as follows:

"RULE 1—SCOPE

(a) These rules shall govern the hours of service and working conditions of the following employees, subject to the exceptions noted below:

Group 1—

Clerks: Clerical workers, stenographers, typists, office machine operators and the following positions if and when established: Train and engine crew callers.

Group 2—

Other office, station and storehouse employes, such as telephone and switchboard operators, janitors, and the following positions if and when established: Messengers, elevator operators, station and warehouse watchmen and storehouse laborers."

The Carrier argued that the Scope Rule is general in character and does not undertake to list the work which the Claimant contends belongs exclusively to him as a Yard Clerk. This allegation was not denied thus the work encompassed by the Scope Rule must be resolved from a consideration of tradition, custom and practice at this job location. The Carrier in furtherance of its position stated as follows:

"... The work of checking these tracks and preparing a switch list for the conductor has never regularly or otherwise been performed by Clerical employes of this Carrier, Monday through Saturday as claimed. . . ."

Again we quote the Carrier:

"... The Libbey-Owens-Ford employe, and the Yard Conductor, on the Sunday in question did not perform any work that they do not perform regularly and have not done for years on all days this glass company operates its plant. . . ."

The foregoing statements were not denied by the Claimant in the record. It was further alleged and not denied, that when the cars were placed on the tracks involved they became the responsibility and under the control of the industry. Thus we presume from this statement that the Carrier was limited in its direction of the work force. There was evidence presented that some of the tracks were on Company property and the cars were under the control of the Company.

We can summarize the Carrier's argument by stating that, as the clerical work had not been assigned nor performed by a Yard Clerk covered by the Agreement it could not be removed and given to an employe not covered by the Agreement in violation of said Agreement.

The Complainant's allegations are cited in the record as appearing in Award 4477 wherein it stated: "It is the rule, however, that when work demands the assignment of a clerk all the clerical work belonging to the Clerks' position and when such work is assigned on weekdays it cannot be assigned to employes not under the Clerks' Agreement on Sunday." The Claimants summarize the above quotation. If it is our work from Monday to Saturday why is it not our work on Sunday.

The facts in this record reveal that this work was performed by the Industry Clerk Monday to Saturday, Sunday if necessary. The only work performed by the Yard Clerk, that is recited in the record, was to receive the switch list from the Industry Clerk. Also on occasions this list was given to the Yard Conductor. These allegations of work performance by the Yard Clerk were not denied by the Claimant. There has been no allegations made on behalf of the Claimant that this work was ever performed in any other manner than as recited in the record. There is no allegation that the work

was performed by the Claimant and taken away from him. These facts do not appear to be in dispute.

Thus we are of the opinion that the work as performed at this location was not exclusively reserved to Yard Clerks under the Agreement. An examination of the evidence before us in the record and the awards of this Division supports the contention of the Carrier.

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 30th day of April 1964.