

Award No. 13630

Docket No. CL-13842

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

**THE UNITED STEELWORKERS OF AMERICA,
LOCAL UNION NO. 3263**

UNION RAILROAD COMPANY

STATEMENT OF CLAIM: The claims in this case are based first, on the conduct of management combining the yard clerk duties at "C" Yard with the weighmaster occupation at No. 3 Scales; and second, the performance of bargaining unit work by members of supervision.

Prior to February 1, 1961, the first turn, or the 8:00 A.M. to 4:00 P.M. turn, the carrier combined the work of the yard clerk at "C" Yard, Clairton, Pennsylvania with the work of the weighmaster at No. 3 Scales. The claims as filed with the carrier are quoted as follows:

Claim YC 89-61

"The grievance is against W. R. Stokes, AGYM, at Clairton, Pa. On morning of Sept. 1, 1961 W. R. Stokes checked the C yard and E yard at Clairton. A weighmaster was on duty, and was not told to go and check the yard since time and work involved would not permit. W. R. Stokes is not a member of local 3263, and has no right to check the yard. This work has been done by the yard clerks and is a past practice. The jobs of a yard clerk and weighmaster were combined (arbitrarily) by the Union Railroad Company; the reason for this the Carrier maintains that the work can be done by 1 man. The morning of Sept. 1, 1961 C. A. Jacobs yard clerk and President of Local Union 3263, caught W. R. Stokes checking the "C" yard. Donald Shrigley, Weighmaster, commented to Mr. Stokes the same morning that he had better watch out or he was going to get caught checking the yard. The afternoon of Sept. 6, 1961, 2:30 P.M. I talked to Mr. Bruce Clay, T. M. by telephone about an incident that happened the morning of Sept. 1, 1961 and in our conversation Mr. Clay told me he knew there was not enough time for the weighmaster on daylight (7 A.M. to 3 P.M.) to check the yard. This is proof in itself that the carrier is admitting that there is too much work at No. 3 Scales, Clairton and "C" yard, Clairton for 1 man to perform both positions; by permitting management personnel to check the yard. It is a violation of Rule 1; and the following agreement in the "red" book of the last contract signed September 1960; which reads as thus: "The parties recognize that the working agreement does not cover employees other than those

specified as included within it's coverage under rule 1 of this agreement.' Please allow 8 hours pay for extra yard clerk J. S. March, because of W. R. Stokes checking the yard."

Claim YC 90-61

"The grievance is against W. R. Stokes, AGYM, at Clairton, Pa. On afternoon of Sept. 10, 1961 3:00 P.M. to 11 P.M. Mr. W. R. Stokes checked the "C" and "E" yards at Clairton. W. R. Stokes is not a member of Local Union 3263, and has no right to check the yards. This work has been done by yard clerks and is a past practice. The jobs or positions of a yard clerk and weighmaster were combined (arbitrarily) by the Union Railroad Company; the reason for this the carrier maintains that the work can be done by 1 man. By permitting management personnel to check the yard, the carrier is admitting there is too much work at No. 3 Scales and "C" and "E" yards and the storage yard for 1 man or position. It is a violation of Rule 1; and the following agreement in the "red" book of the last contract signed September 1960; which reads as thus: "The parties recognize that the working agreement does not cover employes other than those specified as included within it's coverage under rule 1 of this agreement." Please allow 8 hours pay for extra yard clerk S. M. Cunningham, because of W.R. Stokes checking the yards."

EMPLOYEES' STATEMENT OF FACTS: The yard clerk occupation at "C" Yard has been in existence for approximately fifty (50) years.

The duties of the yard clerk at "C" Yard, among other things, are to check tracks, make track lists, make and mark up switching lists, report trains in and out of "C" Yard, transmit orders to conductors and engineers at "C" Yard and "E" Yard, make reports by telephone and in writing, and many other miscellaneous duties.

Late in 1960, management of the carrier informed the organization that it was of the opinion that the volume of operations at "C" Yard had declined and that for reasons of economy it, the carrier, desired to combine the jobs of yard clerk at "C" Yard and weighmaster at No. 3 Scales.

The organization did not agree that the volume of operations had declined to such an extent, but rather it was proposed that a joint study be made to determine whether or not both jobs could be performed by one incumbent. Whereupon, on November 29 and 30, and December 1 and 2, 1960, studies were made. As a result of these studies, the organization report showed that the work in question could not possibly be performed by one individual. The report further showed that the decline in operations at the yard in nowise diminished the responsibilities of the yard clerk occupation and that the nature of the work was such that it could not be combined with the weighmaster at No. 3 Scales without overburdening the weighmaster. The Union study very clearly showed that there was such a volume of work that it was too great for one person to perform. When the organization attempted to discuss this matter further with the carrier, the carrier refused and unilaterally combined the jobs in question. (See exhibits "A" and "B")

The discussions between the organization and the carrier indicated that the company admitted that when the study was made, the volume of work was indeed too great to be performed by the weighmaster alone. However, the com-

"This Division stated in Award 6748 that:

' * * * the Carrier asserts the rule is that the burden of establishing facts sufficient to permit the allowance of a claim is upon the party who seeks its allowance * * * There is such a rule, which is frequently applied, and we think the instant case is one requiring its application * * * Claimant has failed to maintain the burden of establishing his claim and it must be denied.'

"A similar burden has not been discharged here, so therefore, this claim must be denied."

Clearly the employees have not proved that the agreement was violated.

In summary, the Carrier wishes to emphasize:

1. There has been no violation of any agreement rule.
2. The particular work in question, as stated in both grievances, has never been performed exclusively by clerical employees and is not reserved to employees under the clerks' agreement to the exclusion of all others.
3. The burden of proof is on the employees. They have failed to show the agreement was violated.

The Carrier respectfully requests the Board to deny this claim. (Exhibits not reproduced)

OPINION OF BOARD: The two claims arise out of the allegations that the Assistant General Yardmaster of the Carrier on September 1, 1961 and again on September 10, 1961, checked "C" and "E" yards at Clairton and thereby violated the current agreement with respect to yard clerks and weighmasters.

Carrier admits the Assistant General Yardmaster, in pursuance of his duties as such, checked the work of the weighmaster and of the yard clerk, but showed to this Board that such "checking" is the proper function of supervisory forces, and has not been exclusively performed by employees covered by the current agreement.

The Organization, having failed to meet the burden of proving its contentions, and following the principles set forth in Award 13333 of this Board in a similar factual situation between the same parties, we must deny the claims.

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 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

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 28th day of May 1965.