

Award No. 16787
Docket No. CL-16264

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5951) that:

1. The Carrier violated and continues to violate the Clerks' Agreement when on and after December 24, 1962, it removed the work of light-weighing cars at Williamson, West Virginia from the coverage of the Clerks' Agreement, and assigned such work to Motive Power Department Gang Foremen, who are not covered by the Agreement.
2. The Carrier shall restore the work of light-weighing cars at Williamson, West Virginia to the scope and application of the Clerks' Agreement and to the employees covered thereby.
3. The two senior qualified extra Weighmasters at Williamson, West Virginia, presently Joe Ramella and G. T. Johnson, shall now be paid one day's pay each, based on the monthly rate of \$469.84, for each day, Monday through Friday, the work involved is performed by persons other than employees entitled to perform said work under and within the rules of the Clerks' Agreement, December 24, 1962, forward. The claim contemplates that on any day it should develop that there are no qualified extra Weighmasters available, regularly assigned employees entitled to the work under the provisions of the October 15, 1952 Memorandum Agreement shall be additionally compensated by one day's pay at the time and one-half rate of pay, based on the monthly rate of \$469.84. Claim is in addition to any other compensation paid employees on whose behalf claim is filed, and this claim shall continue until all the work removed from the coverage of the Clerks' Agreement is properly restored thereto and to the employees who are entitled to perform same.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains and operates a car repair shop at Williamson, West Virginia, and it is necessary to weigh all cars designated as "light-weighers" when released from this shop.

In event there are no extra employees available on the dates involved in this claim, the employee entitled to overtime in accordance with the provisions of Memorandum Agreement signed on October 5, 1962 between General Yardmaster Bartram and General Chairman Neal, shall be allowed one day's pay at the overtime rate. This pay to be based on the monthly rate of \$469.84 and to be allowed in addition to any other compensation received by Claimants on dates involved in this claim."

Carrier declined the claim.

OPINION OF BOARD: Petitioner has charged that the Carrier arbitrarily removed the work of "light weighing" cars at Williamson, West Virginia from the scope and coverage of the Clerks' Agreement, and assigned such work to Motive Power Department employees who are not covered by that Agreement. Petitioner contends that the work at Williamson, West Virginia was performed exclusively by employees covered by the Clerks' Agreement for over fifty years. There is no evidence in the record to show whether such exclusivity prevailed throughout the system.

In order to prevail, Petitioner is required to prove exclusive system-wide practice under the holdings of the better reasoned awards of this Board. See Awards 11526, 12383, 12787 and 14227. The claim must therefore 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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.