

**Award Number 17826**

**Docket Number CL-18137**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**David Dolnick, Referee**

**PARTIES TO DISPUTE:**

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

**ERIE LACKAWANNA RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6537) that:

1. Carrier violated the Clerks' Agreement at Bison Yard, Sloan, New York and "SK" and "QX" Yards, Buffalo, New York, when, effective February 1, 1966, it required and permitted Inspectors of Operations Meinke and Gabler, who are not covered by the scope of the Clerks' Agreement to perform work at Bison Yard, Sloan, New York and at "SK" and "QX" Yards, Buffalo, New York, covered by the scope and other rules of the Agreement and properly belonging to clerical forces covered by said agreement and
2. Carrier shall now be required to compensate the employees listed below, their daily rate of pay at time and one-half for each day shown in the claim period, February 1, 1966 to February 13, 1966, both inclusive, the dates on which Messrs. Meinke and Gabler performed duties belonging to employees covered by the rules of the Clerks' Agreement.

February 1, 1966—Robert Smith and G. McPherson  
February 2, 1966—Robert Leary and J. C. Clark  
February 3, 1966—H. Heatherley and John Campbell  
February 4, 1966—R. Gernold and R. Miller  
February 5, 1966—E. Schwier and F. Frisch  
February 6, 1966—R. Odea and J. Wandass  
February 7, 1966—J. Turner and G. Beckendorf  
February 9, 1966—F. Orlowski, Sr. and C. Haefner  
February 10, 1966—R. Miller and R. Weber  
February 11, 1966—J. Moritz and J. Morrissey  
February 12, 1966—J. Barth and F. Frisch  
February 13, 1966—E. Schwier

The above regularly assigned employees were available, qualified and willing to work on the above mentioned days of the week, however, they were not called or notified that their services were required. (Claim 1716)

**EMPLOYEES' STATEMENT OF FACTS:** Effective February 1, 1966 and through February 12, 1966, (February 8 excepted) Carrier utilized the serv-

In order that the information furnished the Carrier in conference might be a matter of record, the General Chairman again wrote Mr. Carroll on March 12, 1968 (Employees' Exhibit L) to which Mr. Carroll replied April 15, 1968 (Employees' Exhibit M). As Carrier's letter dated April 15, 1968 was silent with respect to time limits, the General Chairman again wrote Mr. Carroll April 16, 1968 (Employees' Exhibit N) to which Mr. Carroll replied on April 18, 1968 extending time limits in which to appeal to the Third Division. (Employees' Exhibit O).

On June 19, 1968, General Manager-Labor Relations Carroll wrote to the General Chairman offering to dispose of this claim by payment of one (1) hour each day from February 1, through February 7 to each claimant and the senior claimant one (1) hour each day from February 9 through 13. (Employees' Exhibit P). On July 15, 1968, the General Chairman replied to Mr. Carroll accepting the settlement proposed by the Carrier provided it was distinctly understood that at no time in the future would any of the work assigned to positions coming under the scope of the Clerks' Agreement at Bison Yard be performed by employees not covered by the agreement, unless otherwise agreed to, (Employees' Exhibit Q) to which Mr. Carroll replied July 19, 1968 (Employees' Exhibit R). In view of Carrier's reply, General Chairman wrote Mr. Carroll on September 6, 1968 rejecting the proffered settlement. (Employees' Exhibit S).

(Exhibits Not Reproduced)

**CARRIER'S STATEMENT OF FACTS:** Inspectors of Operation are under the jurisdiction and report to the Superintendent of Transportation and Vice President-Operations. It is a duty of an inspector to investigate trouble, complaints and check the efficiency of operation of facilities under the jurisdiction of Division Superintendents.

Because of complaints received that cars were being badly delayed in Carrier's yard at Buffalo, N.Y., Inspector of Operation T. Gabler and A. Meinke were sent to investigate and check the efficiency of operation and report to their supervisors. Mr. Gabler was at Buffalo from February 1 through 13 and Mr. Meinke from February 1 through 7.

During the time the inspectors were at Buffalo they checked the work performed by clerks and took an inventory of cars in the yard. No clerical positions were abolished or annulled and clerks performed all their normal duties of checking cars, tracks, making reports, handling bills, etc., during the period.

On February 3, 1966, the Local Chairman filed a protest with the Superintendent that exclusive clerical work was allegedly being performed by the inspectors checking tracks and taking an inventory of cars, which was answered on February 4, 1966. Claim instituted on February 23, 1966 was denied and thereafter handled on appeal and denied at all levels. Copies of pertinent correspondence are attached as Carrier's Exhibits A through O.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** Two Inspectors, not covered by the Clerks' Agreement, were dispatched to Buffalo, New York yards, during the winter of 1965-1966 to supervise performance at the electronic classification yard owned jointly by this Carrier and Norfolk and Western Railway. An implementing agreement between the two carriers and the Clerks was entered into covering the coordination of positions resulting from the operation of the joint yard. While there, the Inspectors investigated troubles and complaints,

checked the operation of the facilities, "checked the work performed by clerks and took an inventory of the cars in the yard." One Inspector was at Buffalo from February 1 through February 13, 1966 and the other from February 1 through February 7, 1966.

Employes' basic position is that taking inventory and checking cars or tracks is work belonging to employes covered by the Clerks' Agreement and that the Carrier violated that Agreement when the Inspectors were required to and did perform that work.

Carrier does not categorically deny that the Inspectors took inventory and checked cars. They simply say that this work does not belong exclusively to employes covered by the Clerks' Agreement.

It is true that the Scope neither describes nor defines clerical work. But the convincing evidence in the record shows that clerical employes have by history, custom and practice performed that work. There is no showing and the Carrier has presented no probative evidence, that Inspectors have traditionally taken inventory and made out inventory sheets.

When the claim was first presented to the Superintendent on February 3, 1966, he replied that Inspectors are officers of the Company and "they can do whatever they feel necessary to be done to improve operation and alleviate complaints." Carrier's highest appeal office later wrote, in part, as follows:

"Positions of Inspector of Operation have historically made special checks and studies to determine the efficiency of operation and report same to the Superintendent of Transportation and Vice President-Operations. The checks made by Messrs. Meinke and Gabler to determine delays, if any, of cars in Buffalo Yard did not take any work away from clerks. There were no written reports made by inspectors and furnished to the Superintendent, nor were any reports made by inspectors that would normally have been performed by clerks, who performed the same work as normal."

But the record shows that the Inspectors did perform "productive work", work which by history, custom and practice has been done exclusively by employes covered by the Agreement. It may have been historic for Agents, Inspectors, yardmen and others to check bills, cars, hold tracks, etc., but it has not been historic for them to take inventory and prepare inventory sheets as was done in this case.

The record shows that only one Inspector remained in the Yard from February 9 through February 13, 1966. The claims on behalf of two clerks for February 9, 10, 11 and 12, 1966 is erroneous. The claims of the senior clerk only for each of those dates is valid.

**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 Employes involved in this dispute are respectively Carrier and Employes 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

Carrier violated the Agreement.

**A W A R D**

Claims sustained for February 1, 2, 3, 4, 5, 6, 7 and 13, 1966. Claims for February 9, 10, 11 and 12, 1966 are sustained for only one of the two clerks named for each of the dates; the senior of the said two clerks.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of April 1970.