

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****J. Thomas Rimer, Jr., Referee**

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES****MISSOURI PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6810) that:

1. Carrier violated the current Clerks' Agreement when it required and/or permitted Engine Foreman at Little Rock, Arkansas, to perform the routine clerical work of making physical check of car initials and numbers to verify and correct Terminal Car Control list for the purpose of making proper corrections for Terminal Car Control and Yard operations, in violation of Rules 1, 2 and related rules of the Clerks' Agreement.

2. Carrier shall be required to compensate the claimants set forth in the following "Claim Statement" in the amounts shown, beginning with March 17, 1969.

(Note: Claims are subject to all general wage increases obtained subsequent to the first claim date.)

(a) Claim of W. S. Wilson, City Clerk (068) for 8 hours at punitive rate of \$38.94, for March 17, 18, 19, 22, 23, 1969, a total of 5 days, amount — \$194.70 with claims continuing on the same basis for the claimant or his successor(s) for each subsequent Monday, Tuesday, Wednesday, Saturday and Sunday, until claims are allowed and violation of Agreement discontinued.

(b) Claim of J. L. Green, City Clerk (067) for 8 hours at punitive rate of \$38.94, for March 19, 20, 21, 22 and 23, 1969, a total of 5 days, amount — \$194.70 with claims continuing on the same basis for the claimant or his successor(s) for each subsequent Wednesday through Sunday, until claims are allowed and violation of Agreement discontinued.

(c) Claim of W. L. Pierce, City Clerk (061) for 8 hours at punitive rate of \$38.94 for March 17, 18, 19, 20 and 23, 1969, a

for a physical onground inventory of cars. To require a foreman or a clerk or any other employe to make a physical inventory of yard tracks would be totally incompatible with the new mechanized system.

11. The claims were discussed in conference on September 3, 1969 after which Carrier wrote the General Chairman as follows confirming that discussion:

"The facts and our position were correctly stated to you in our letter of August 5, 1969 declining these claims.

Following receipt of the handwritten lists on Form 21020 furnished by you, we made a further check into this matter and the Superintendent advises that apparently some lists have been prepared by foremen at North Little Rock but the preparation of such lists is contrary to instructions issued by the Superintendent and the lists are not needed nor are they used by the yard office personnel.

The use of switch lists prepared by the yard office personnel, as explained to you in our letter of August 5, 1969, is not violative of the Clerks' Agreement. In this connection, please see Award 108, Case 280A, Special Board of Adjustment No. 562, Clerks vs C&NW Railway Company.

In view of the foregoing, the claims are without merit and there exists no basis for changing the decision given you in our letter of August 5, 1969, declining these claims."

OPINION OF BOARD: The dispute centers on the work performed by Engine Foremen at the "hump" yard which is considered to be clerical in nature by the Organization, claimed to be work historically performed by Clerks and thus reserved to them under the Scope Rule of the Agreement. Violation of other rules are also cited, but if the claim has merit it must rest primarily upon a showing of evidence amounting to clear and unrefuted proof of violation of the Scope Rule.

The Scope Rule is general in nature and does not describe the work of any clerical position. Accordingly, it is necessary to examine the record before us to determine whether the work assignments at issue are reserved to the employes under the Clerks' Agreement by custom and practice and that the facts do or do not support the contention that the work has been historically and continuously performed by Clerks.

The Carrier installed an automated inventory control in this yard on July 13, 1968, described as a perpetual inventory car location system. Among its purposes was the elimination of manually prepared car inventories and placement in the yard which was the work of Bowl Clerks employed on a three shift basis. On September 9, 1968 the positions were abolished. Prior to the installation of the new system Engine Foremen and switch crews were furnished car lists, or work orders, compiled by the clerical force and based upon the inventory records maintained by the Bowl Clerks.

The claim before us was filed April 9, 1969, alleging that a letter of instructions from J. B. McCormack, Superintendent, dated March 17, 1969

violated the Agreement. The Division Chairman stated, "The physical verification requiring the Engine Foreman to add car numbers or delete car numbers from lists to be switched and calling on TCC clerks for disposition amounts to a physical yard check of the cut or rail to be pulled and switched". The letter of claim also included the statement, "Also we are aware this system is geared to high performance and efficiency and when perfected will benefit both Management and Employee. It is the area of transition from the old and accepted method of handling cars in the Terminal Yards to the new method under Terminal Car Control that we are concerned with at this time".

In reply, the Superintendent wrote, "We do not agree that work performed by the Engine Foremen or adding or deleting car numbers to the lists or checking with the TCC Clerk for disposition of cars amounts to a physical check of the Yard as claimed or that work performed by the Engine Foremen is exclusively assigned to Clerks, therefore, there is no basis for payment of these claims and they are respectfully denied".

In its further appeal on the property, the Organization presented copies of Form 20120 completed by Engine Foremen on ten cited occasions which purported to be an inventory list resulting from a check of the track, allegedly a task performed by Yard Clerks. Also introduced was a statement from an Engine Foreman to the effect that he was required to "physically write down from two to five car numbers in their respective order in the cut of cars in Bowl Rail #56, also marked cars shown on list that were not in the rail and verified same to TCC Clerk". The statement also includes the employee's opinion that, "this is and has always been Clerk's work".

The parties maintained their positions through each step of appeal on the property. In general, the Organization contended that there had been a transfer of work to another craft; the Carrier argued that there had been an elimination of clerical work through the installation of the new TCC system and a job abolishment some seven months before the claim was filed. With respect to the handwritten lists on Form 21020 submitted as "proof" of a violation, the answer from the highest officer contained this comment, "Following receipt of the handwritten lists on Form 21020 furnished by you, we made a further check into this matter and the Superintendent advises that apparently some lists have been prepared by foremen at North Little Rock but the preparation of such lists is contrary to instructions issued by the Superintendent and the lists are not needed nor are they used by the yard office personnel".

The Carrier contends that this issue has already been settled on this property in Award 17836 (Dolnick). In that case the claim rested on the asserted violation of the Agreement because switchmen and others were adding to or otherwise correcting switch lists as an incidental duty to their primary assignment. It was held that such work did not belong exclusively to employees covered by the Clerks' Agreement. The Organization here argues that the award is not controlling nor has value as precedent since it related to verification of car lists used on industry tracks by employees other than clerks and not in a hump yard as in the case before us. A careful reading of that award leads us to the conclusion that the argument thus advanced is a distinction without a difference. It held that verification of train lists was not a violation of the Clerks' Agreement and that is the precise issue in the instant case.

It is the conclusion of this Board, based upon all the evidence before it, including the testimony and arguments presented at the referee hearing, that the verification, correction, or otherwise updating of the train lists furnished by the clerical force, is a task essential to the effective performance of the primary duties of Engine Foremen and is but incidental to those primary duties. It was required of that position prior to the installation of the TCC system and has not been changed as a result of that installation. Such work is not exclusively reserved to employees covered by the Clerks' Agreement.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1971.