

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19320
Docket Number CL-18140

Gene T. Ritter, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood GL-6575)
that:

(1) Carrier violated current Clerks' Agreement when it arbitrarily and unilaterally removed work from the scope of such Agreement, and refused to return and assign such work to a position and/or positions under the scope of the Agreement, and

(2) That K. M. Laign, Martinsburg, W. Va., shall now be paid for one (1) day each date on December 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 27, 28, 29 and 30, 1965 and each subsequent date of record, at the rate of \$20.99 per day (plus any subsequent wage increases and/or applicable rate adjustments) until such work is properly assigned and/or restored to a position, and/or positions, under the scope of the Clerks' Agreement.

NOTE: Claims for subsequent dates of record are being held in abeyance by agreement between Carrier's Division Superintendent and Organization's Division Chairman at Cumberland, Maryland.

OPINION OF BOARD: In December of 1965, Clerical positions at Cumbo Office, a point within Martinsburg Yard, were transferred to the Martinsburg office. Prior to that time, the loading at Blair Quarry was brought into Cumbo where it was checked by Yard Clerks. This check consisted of getting the car number and light-weights of the Blair cars from the Yardmaster or copying them directly from the Yard Foreman. When the Clerical positions at Cumbo were transferred to Martinsburg Yard Office, this practice was discontinued and instructions were issued to the Yard Foreman on the Yard Crews switching Blair Quarry that they were to list the number and light-weight of each car placed or pulled by them at Blair Quarry and convey this information to the Yard Clerks Martinsburg Yard office verbally over the telephone. The Organization contends that this operational change resulted in a diversion of the Clerical work in connection with the outbound loading from the Quarry, such as, transfer of the physical track check from positions under the scope of the Clerks' Agreement to positions covered by the Trainmen's Organization. Carrier denies that this action is a violation of the Agreement for the reason that the Scope Rule of the Clerks'

Agreement does not confer Clerical employees the exclusive right to listing of cars left or picked up at industries and that on this property, work of this nature has traditionally and customarily been performed by Conductors and Yard Foremen as incidental to their primary duties. Carrier also contends the fact that work of this sort has been assigned to Clerical employees at a specific point does not preclude Carrier from changing his operation so long as the change is in no way violative of the provisions of the Clerks' Agreement.

This claim concerns itself with the physical track check made in preparation for an outbound train movement, and obtaining the car light-weights to be used in billing. This work was performed by Yard Clerks at the Cumbo site and was removed from the Yard Clerk positions where the site of the positions was changed from one point within Martinsburg Yard switching limits to another point within these same limits, and the site of some of the work performance to a third point within the same switching limits. Special Board of Adjustment No. 192 in its Award in Docket No. 91 interpreted the Scope Rule involved in this case. This award is found to be controlling in this instance. This Award held that once work is placed under the Clerks' Agreement, it can not be removed from and given to other employees except as provided in Rule 1(c), that Rule 1(c)4 does not stand alone, but is interdependent with 1(c), 1, 2 and 3. This Award also held that Rule 1(c) is a limitation on the so-called "Ebb and Flow" Doctrine. It applies only in situations where a position covered by the Clerks' Agreement is abolished. This Award held that under that Rule when work is assigned to a given position under the Clerks' Agreement and that position is abolished, the work must be assigned in the first instance to a position or positions covered by the Agreement, if one existed at the location. This is true even if the work on the abolished position is incident to or directly attached to the primary duties of another craft or class. This is not to say that work incident to and directly attached to the primary duties of another craft as set out in Paragraph 4 of Rule 1(c) may not be performed by employees other than the Clerks, but simply that once such work has been assigned to a position covered by the Agreement at a given location, it can not "flow back" to the class or craft to which the work is incident, if the clerical position is abolished and another position or positions covered by the Agreement exists at the location where work of the abolished position is to be performed. Therefore, this claim will be sustained.

However, the amount claimed is found to be excessive. Therefore, we will award two hours pay at the rate of a Yard Clerk at the Cumbo segment of the Martinsburg Yard for each day the violation exists.

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 violated in accordance with the Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1972.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 19320,
DOCKET NO. CL-18140

The Neutral in Award No. 19320 states:

"Special Board of Adjustment No. 192 in its Award in Docket No. 91 interpreted the Scope Rule involved in this case. This award is found to be controlling in this instance. * * * It applies only in situations where a position covered by the Clerks' Agreement is abolished. This award held that under that Rule (Rule 1c) when work is assigned to a given position under the Clerks' Agreement and that position is abolished, * * *."

There was no abolishment. The clerical positions at Cumbo Office, a point within Martinsburg Yard, were transferred to the Martinsburg Yard Office. The Carrier submitted and the employees conceded that no rule in the Clerks' Agreement restricts the Carrier's right to change its operations.

As the Carrier pointed out the work required of the yard foremen on the Martinsburg Yard Turns was an integral part of their assigned duties. On this property for a period of many years, conductors and yard foremen have been properly required to perform duties such as those involved here in direct and immediate connection with their daily assignment. This method of operation has become accepted practice on this property for this long period of time. In fact, a specific requirement appears in the Carrier's Book of Operating Rules. The protested work here is covered by Rule 907 of the Operating Rules effective April 26, 1953 which reads as follows:

"They will make out promptly all reports required of them and forward them promptly at the end of each trip.

"They will keep a record of any occurrence of importance, including severe shocks to trains."

Rule 907 appears in that group of operating rules particularly applicable to conductors and yard foremen. Such a rule requiring conductors and yard foremen to prepare reports required of them appeared as long ago as the Book of Operating Rules that was effective August 1, 1917 and has appeared in successive revisions since that date.

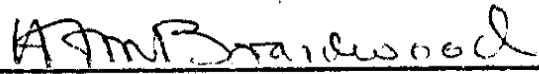
The record before the Neutral showed conclusively an extensive background and prolonged practice of requiring conductors and yard foremen to make the reports with which we are here concerned.

In support of that position other Special Board Awards on this property, and Awards of the several divisions of this Board, were given to the Neutral but he chose to select the Award in Docket No. 91, Special Board of Adjustment No. 192.

As can readily be observed Rule 1(c) applies only in situations where a position covered by the Clerks' Agreement is abolished.

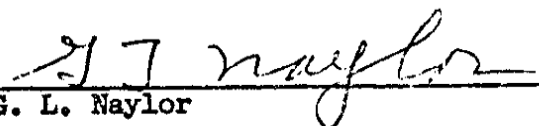
The neutral was advised that the fact that the work of this sort has been performed by clerical employees as well as conductors and yard foremen as an integral part of their assigned duties does not preclude the Carrier from changing its operation so long as the change in no way violates the provisions of the Clerks' Agreement. In this connection, the employees have failed completely to offer any evidence whatever to support their position.

The Award is palpably erroneous and we dissent.


H. F. M. Braidwood


P. C. Carter


W. B. Jones


G. L. Naylor