

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20290
Docket Number CL-20346

Joseph A. Sickles, 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-7329) that:

(1) Carrier violated the Clerks' Agreement when it arbitrarily and unilaterally removed clerical work from the scope of such Agreement and failed to assign such clerical work within the scope of such Agreement at Wayne Yard, Hamilton, Ohio, and did assign such work to employees not covered by the scope of the Clerks' Agreement, and

(2) That the following named claimants shall be paid 8 hours' pay at overtime rate for each date, as listed, on which employees not covered by the Clerks' Agreement performed clerical work covered by said Agreement.

E. G. Asher	- September 7, 8, 14, 15, 21, 22 October 27 November 2, 3, 9 and 10, 1971
J. L. Mayes	- September 9, 16, 17, 23, 24, 30 October 1, 7, 8, 14, 15, 21, 22, 29 November 16, 17, 23, 24 and 30, 1971
D. A. Zellner	- September 10, 11, 18 October 16, 23 November 5, 12, 19 December 20, 21, 22, 23, 1971 February 17, 18, 21, 22, 23, 24, 25, 28 and 29, 1972 April 5, 14, 20, 21 and 23, 1972
J. L. Trauthwein	- September 13, 20, 27 October 4, 11, 18, 25 and 26 November 1, 8, 15, 22 and 29, 1971
P. Collins	- September 28 October 5, 12 and 19 November 4, 11 and 18, 1971
R. G. Turner	- September 29; October 13 and 20, 1971
J. E. Mayes	- November 26, 1971

W. B. Greer

- December 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16 and 17, 1971
- January 4, 24, 25, 26, 27, 28 and 31, 1972
- February 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, and 16, 1972
- March 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29 and 30, 1972

L. G. King

- January 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20 & 21, 1972

J. C. Trauthwein

- April 3, 4, 6, 7, 10, 11, 12, 13, 17, 18, 19, 24, 25, 26, 27 and 28, 1972.

OPINION OF BOARD: The asserted violation results from Carrier's action of mid-August, 1971. Prior to that time, one 6-day position of Yard Clerk and one 5-day position existed at Wayne Yard. Incumbents of the positions performed all yard checking and related clerical work.

In mid-August, 1971, the two Yard Clerk positions were abolished, and a single 6-day position was established.

The Organization alleges that concurrently, Yardmasters commenced performance of Yard checking, and related clerical work, previously performed by the incumbents of the 2 positions. Specifically, it is asserted that Yardmasters made physical checks of the tracks in Wayne Yard; listed freight cars on such tracks and listed additional cars on lists previously and "partially" prepared by the one remaining Yard Clerk.

The Carrier's contention is basically set forth in its October 26, 1972 denial of the claim as follows:

"At the time this claim was discussed in conference you furnished copies of track checks made by clerks on which additional car numbers had been added. You stated that a check of the handwriting would disclose that the additional car numbers were added by yardmasters at Wayne Yard which would clearly support your contention that the yardmasters were making track checks.

I have made a thorough investigation of the facts involved in this case and have found that there is positively no foundation to the contention that yardmasters at Wayne Yard are making track checks.

Prior to the time these claims arose there were two Yard Clerks assigned at Wayne Yard, one on each of the first and second tricks. The second trick position was abolished and following this abolishment the first Trick Yard Clerk, who goes on duty at 6 A.M., has been

"held on overtime each day until 5 P.M. This first trick Yard Clerk makes a complete check of Wayne Yard daily and furnishes the Yardmaster separate lists for each track he has checked. While it seldom happens, should there be any necessity for a track check after 5 P.M. and before 6 A.M., a Yard Clerk from Pit Yard is sent to Wayne Yard to make it.

After the track checks are given to the Yardmaster he uses one copy to formulate his instructions to the yard crew to accomplish the necessary switching. The Yardmaster retains one copy of the track check for his own use and it is on this copy that additional car numbers are added. However, the additional car numbers are not added due to the Yardmaster making another track check as you contended. Rather, the Yardmaster, after having given the yard crews their switching instructions, scratches the numbers off the list for the track where the cars originally stood and adds them to the list for the track where he has had them switched. As I am sure you can readily understand it would be virtually impossible for the Yardmaster to commit to memory every switching movement he ordered in a yard such as Wayne. The deletion of car numbers from one list and the addition of such numbers to another list serves no other purpose than to permit him to know where he has ordered cars to be switched. It is not a record required by the Carrier but merely the Yardmaster's own personal record of his switching movements.

The contention that the work in dispute here was formerly performed by incumbents of abolished clerical positions is also false. The Yardmasters at Wayne Yard always maintained this personal record themselves before any abolishment of clerical positions occurred. Furthermore, there has never been a yard clerk position on the third track at Wayne Yard, clear evidence that the work was not removed from a clerical position."

The Organization relies upon various Awards to substantiate its claim, with specific reference to Awards 59 and 91 of Special Board of Adjustment No. 192, concerning these parties and Third Division Award 18804, also concerning these parties. It also relies upon a settlement of a prior claim to enhance its position.

We have reviewed these prior Awards and note that the Referees have sustained claims upon a showing that clerical duties have been performed by other sources. Moreover, we note that Carrier does not dispute the validity of these prior Awards. At Page 2 of its Rebuttal Brief, Carrier states:

"At no time during the handling of this case on the property has the Carrier even attempted to argue that Yardmasters at Wayne Yard have a proper right to make physical track checks, particularly following the abolishment of a yard clerical position. The Carrier is quite aware that such assignment of work is not proper."

Accordingly, it would appear that our function in this dispute is limited to a review of the evidence of record to ascertain if, in fact, Yardmasters performed work of an admittedly clerical nature.

The Railroad Yardmasters of America was given due notice to participate as a Third Party and submitted an Ex Parte Submission. It insists that Yardmasters have not performed Yard checking and/or other related clerical work.

The Organization contends that the abolition of positions, coupled with the production of listings of cars in the handwritings of Yardmasters leads us to the inescapable conclusion that Yardmasters are conducting track checking. We are not prepared to hold that the fact of Yardmasters' handwriting, in and of itself, warrants a sustaining Award.

We have searched the record at length, but have been unable to discover any evidence to demonstrate, or suggest, that any particular Yardmaster did physically check tracks or performed clerical duties at any designated time or place. Thus, we have before us only a presumption of a violation.

We are not unmindful of Carrier's assertions, cited above, that Yardmasters make notations on the lists for their own personal use to assist in recalling the location of cars which have been switched. We have considered that information as it relates to Award 18804. There, Yardmasters used copies of Yard checks prepared by clerks, and transcribed information on forms on which they wrote switching instructions. This Board held that preparing a compilation is clerical in nature, and sustained the claim.

In this regard, we have reviewed the record in its entirety for evidence concerning procedures used by Yardmasters prior to the abolition of the two (2) positions. We do not find that the Organization, in any documents considered on the property, or in its Submission or Rebuttal Brief, made any statement directly, or by reasonable implication, that Yardmasters did not utilize this same procedure (handwritten notations to assist memory) prior to the abolition of the positions. If the record demonstrated that procedures did not alter, such evidence might be indicative of one result. However, if coupled with position abolition, there was a direct showing that the Yardmasters instituted a new

procedure, it would be incumbent upon this Board to consider whether or not a logical extension of the concept of Award 18804 is indicated. Absent such proof, the Board may not make such an appraisal.

While we confirm that there is no question that Carrier cannot assign admitted clerk duties to other employees, under this record we are unable to issue a sustaining Award. As noted above, Claimant relies upon presumptions which are conclusionary in nature. In order to prevail the moving party must establish its claim by a preponderance of probative evidence. See Awards 18515, 19306, 19963 and 20026.

From the evidence of record, we are unable to resolve the dispute and are therefore compelled to dismiss the claim for failure of proof.

Our disposition of the claim is procedural in nature. We do not mean to suggest, in any manner, that we reverse, or otherwise dilute, the merits of the Awards relied upon by the Organization.

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 claim be dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.