

Award No. 19011
Docket No. CL-19103

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 6856) that:

1. The Carrier violated the rules of the Agreement extant between the parties when it permitted and/or instructed Yardmaster D. A. Yniguez to make a list of cars on Track West #7, South Sacramento Yard, at 8:50 A. M. 10/8/69 and another list of cars on Track West #9, South Sacramento Yard, at 2:30 P. M. on 10/8/69 for the use of the Switch Foreman.

2. Mr. Don Richmond, Yard Clerk, shall be allowed a call for each instance that the violation occurred.

EMPLOYEES' STATEMENT OF FACTS: On October 8, 1969, Clerk Don Richmond was working his regular assigned position of Yard Clerk, 6:30 A. M. to 2:30 P. M. Mr. D. A. Yniguez was the Yardmaster on duty at this time as was Switch Foreman A. F. Scullion. The duties of Yard Clerk position are as follows:

Must be able to check yards, fill in yard checks, seal and weigh cars, manipulate vents and check cooling devices on refrigerator cars.
Must have valid California Drivers' License.

At approximately 8:50 A. M. Yardmaster Yniguez was observed making a list of cars on Track West #7, (Employes' Exhibit "A-1") which he then handed to Switch Foreman A. F. Scullion. Later the same day, the Yardmaster was seen making a list of cars on Track West #9 at approximately 2:30 P. M. (Employes' Exhibit "A-2"). This list was also handed to Switch Foreman A. F. Scullion. As a result of this violation, Clerk Don Richmond filed a claim for a call for each infraction that occurred on his shift. (Employes' Exhibits "B-1 and B-2"). These claims were declined by Agent J. H. Conley through his letter of October 30, 1969. (Employes' Exhibit "C"). A letter of verification on date of November 8, 1969 was written by Switch Foreman Scullion to Superintendent J. C. Lusar, in which he verified the facts that had occurred. (Employes' Exhibit "D"). On November 8, 1969, Division Chairman W. D.

(3) Laborers employed in and around stations, storehouses, warehouses, ice houses or ice docks.

Positions within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 64.

This agreement shall not apply to individuals where amounts of less than Thirty (\$30.) Dollars per month are paid for special service which takes only a portion of their time from outside employment or business, or to individuals performing personal service not a part of the duty of the carrier."

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case disclose that on October 8, 1969, this Claimant (Clerk) was working his regularly assigned position of Yard Clerk on the 6:30 A. M. to 2:30 P. M. trick. At approximately 8:50 A. M., the Yardmaster was observed making a list of cars on Track West No. 7. He was then observed handing the same to the Switch Foreman. Later that day and approximately 2:30 P. M., this same Yardmaster was observed making a list of cars on Track West No. 9. This Yardmaster was then observed handing this list to a Switch Foreman. The facts do not appear to be in dispute between the parties. It is the contention of the Organization that the listing of the list of cars and transmittal of the same to a Switch Foreman constituted work belonging to employees covered by the Clerks Agreement. Carrier attempts to show that this work has never been exclusively performed by members of the Clerks Organization by rendering two affidavits found on record pages 56 and 57 which tend to establish the fact that Yardmasters have always given written instructions to Switchmen pertaining to switching cars. Consideration of these two affidavits was objected to by the Organization and this objection is sustained. These affidavits can not be considered for the reason that they were not introduced, discussed or handled on the property. The affidavits were obtained on December 20, 1970. The notice of intent to appeal arrived at this Board on August 25, 1970.

It is the opinion of this Board that the work involved in this dispute is work generally recognized as that belonging to Clerks.

As is Petitioner's position in this case, the Clerks are not contesting the right of Yardmaster to supervise and assign work to Yard Forces. A yard check is made and filled in by Clerks, which, in turn, is furnished the Yardmaster. It is the further position of the Organization, in this dispute, action by the Yardmaster in compiling a list of cars and furnishing the same to the Switch Foreman, constituted a direct violation of the Clerks' Scope Rule. The Organization also takes the position that the involved work belongs to the Yard Clerks by bulletin and assignment. We believe that the position of the Organization in this instance is well taken. Also, Award 18804 (Frauden) upholds this position. Award 18804 states:

"* * * The compilation of lists such as the one used by the Yardmaster is clerical in nature and properly belonging to employees covered by the Agreement."

The facts contained in Award 18804 are compatible with the facts outlined in this dispute. Therefore, under authority of Award 18804, this Claim will be sustained.

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

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.