

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Leverett Edwards when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that—

The Yardmaster work, duties and authority at Russell Car Shop, Russell, Kentucky, be restored to the Yardmaster class and the Carrier required to bulletin and fill Yardmaster position in accordance with pertinent provisions of the Yardmasters' Agreement.

EMPLOYES' STATEMENT OF FACTS: Prior to June 26, 1930, position of Yardmaster was maintained at Russell Car Shop, Russell, Kentucky, the incumbent of which carried the authority and performed the work and duties generally recognized as those of Yardmaster.

On or about June 26, 1930, without conference or agreement, the Carrier abolished that Yardmaster position and assigned the Yardmaster work, duties and authority to employes outside the purview of the Yardmasters' Agreement.

For a considerable portion of the time during which this Yardmaster position was maintained there was one crew assigned there to perform the switching service.

There are now two crews assigned to perform that service, one of which normally works from 3:00 P.M. to 11:00 P.M., the second one from 3:59 P.M. to 11:59 P.M.

One position of Clerk is maintained at Russell Car Shop, hours of duty 12 noon to 8:30 P.M., the incumbent of which assumes the Yardmaster authority and performs the Yardmaster work and duties, supervising the two crews mentioned in their work and issuing instructions—oral and written—to them concerning such work, all of which is that normally performed by employes of the Yardmaster class and which is the same as that performed by Yardmasters in other portions of Russell Yard and in other yards on this same Carrier, as well as the same as that generally performed by Yardmasters on all of the railroads of our country, and which are the same as were performed by the Yardmaster during the time that the Yardmaster position was maintained prior to June 26, 1930.

During the time prior to June 26, 1930, the Yardmaster position was the only one maintained, that is, there was no Clerk on duty there, the Yardmaster performing all of the work.

POSITION OF EMPLOYEES: As a result of this Board's Award No. 321, Docket No. 315, representatives of the employes met with representatives of the carrier on September 5, 1946, and agreed as to when and how a joint check would be made to determine just what work is being performed by the Clerk at Russel Car Shop. The Committee met at Superintendent Myers' office at 1:30 P.M. same date and was composed of Messrs. F. W. Myers, M. E. Cridlin and B. Bryant representing management and Messrs. J. E. Toothman and R. E. Powell representing the employes. They were to go to the Shop together, part staying at East gate and the rest going to West End and between these two groups would locate the Clerk. It was further agreed that they would tell the Clerk their intentions and that they were there to check the work he did. It was further agreed that no one was to interfere with the Clerk with respect to the manner in which he did his work. Subsequent developments, however, resulted in failure of the Committee as a whole to agree on the report and it was necessary for the employes to submit their own report direct to Mr. J. B. Parrish, Vice-President, and a subsequent exchange of correspondence failed to result in agreement on the report. Copy of the employes report as submitted to Vice President Parrish is submitted and marked as Exhibit "A."

Copies of certain switch lists issued by the Shop Foreman direct to the Clerk covering work to be done on February 27, 28, March 3, 8 and 19, 1947, are submitted and marked Exhibit "B."

Copies of statements of Yardmasters C. P. Meadows and A. D. Carter, dated May 11th and May 12, 1947, respectively, are submitted and marked Exhibit "C."

Copies of Bulletin Nos. 19, 20 and 50 issued by Superintendent Myers under date of February 12, 1947, are submitted and marked Exhibit "D."

Copy of letter of May 4, 1947, addressed to General Chairman Powell and signed by Clerk S. E. Schmidt is submitted and marked Exhibit "E."

From the evidence contained in employes' report to Vice President Parrish it is established that representatives of carrier did not act in good faith in carrying out their part of the requirements of Award No. 321. It is further shown by the evidence submitted that the Assistant Yardmaster at the West End of the new classifying yard cannot and does not exercise supervision over the operation at the Car Shop—notwithstanding the notice issued by Superintendent Myers on February 12, 1947; it is likewise shown that the Clerk, in spite of the instructions issued by the Superintendent, performs his work as before, laying out the work and issuing instructions to crews for its performance.

Therefore the use of Clerk in lieu of a Yardmaster constitutes violation of the Agreement and the claim should be allowed.

CARRIER'S STATEMENT OF FACTS: This case covers a resubmission of a previous case. In other words, this case was previously covered by Docket 315 and Award 321.

Reference to Award 321 (Docket 315) will show that the claim originally had three parts:

"(1) The carrier violated the yardmasters' agreement when on or about June 26, 1930, without conference or agreement, it abolished the position of yardmaster at Russell Car Shop, Russell, Kentucky, and assigned the yardmaster work, duties and authority to employes outside the purview of the yardmasters' agreement, and thereby illegally and improperly removed the work, duties and authority of the yardmaster class from the scope and operations of the yardmasters' agreement.

"(2) The yardmaster work, duties and authority shall be restored to the yardmaster class and the carrier required to bulletin the yardmaster position.

“(3) Employees affected be compensated for all losses from and after June 26, 1930, and until the condition complained of is corrected,”

Claims 1 and 3 of Docket 315 were denied by Award 321. Claim 2 was remanded with the following language:

“The Board is not able to determine from the record in this cause whether clerks have been doing yardmasters' work and, therefore, is unable to decide whether Claim 2 should be sustained or denied. The cause is remanded to the field for a joint check on the property. If, after such joint check the parties cannot agree, the cause, so far as such claim is concerned, together with the evidence adduced during the joint check and all other pertinent evidence deemed necessary by either party, may be again brought to this Board.”

The parties made a further field check on the property as suggested by the Board, but were unable to dispose of the case in a mutually satisfactory manner as a result of the field check. The employees have, therefore, re-submitted the case exparte.

After the case was remanded to the parties by Award 321, the carrier endeavored to get the employe representatives to state what they contended the clerk in question was doing which was yardmaster work. The only statement of any kind the carrier was able to get the employe representatives to make on this was a verbal statement to the effect that all of the work performed by the clerk, except acting as weighmaster, was yardmaster work, based on the contention that a yardmaster did work of a similar nature for 14 days when the car shops began operation on or about November 1, 1929, or some 18 years ago.

However, in the discussion centering on the field check made in accordance with Award 321, the employe representatives placed emphasis on the fact that the clerk had had some conversation with the second yard crew coming into the car shop properties on the day of the joint check.

The Carrier explained to the employe representatives that it was clearly not intended that the clerk have any authority to instruct the crew what to do or even suggest the manner in which they perform their work. Stated otherwise, the sole function of the clerk was to gather information and record it in such shape that the yard crews could perform their work expeditiously and not have to puzzle over many lists or memoranda to find where different cars were to be set, etc.

When a mutually satisfactory disposition was not arrived at as result of the field check made subsequent to Award 321, the carrier took action to prevent any further controversy about the so-called contact between the clerk and the different yard crews. The carrier found that it could rearrange the work so that the clerk would have no opportunity to see the crews or have contact with them, except when doing bona fide weighmaster (clerical) work at the track scales at the new car shops.

The carrier, subsequent to the field check made in obedience to Award 321, has arranged to have the clerk in question come on duty earlier. The clerk reports to an assistant yardmaster at a point removed from the car shops. He is then sent by the assistant yardmaster to the car shops to make a check of the tracks and to gather information from the various supervisory forces at the car shops to show where they wish the different cars to be placed for working on, removal from the shops, etc. The clerk goes and gets all of this information before the switch engine crews working at the car shops go on duty. The clerk sits at a desk in the assistant yardmaster's office and makes memoranda or lists showing where the shop forces want the different cars placed. These memoranda (or lists) are turned over to the assistant yardmaster, and the clerk is then assigned to do whatever general yard work the yardmaster may wish him to do until it is necessary to send him to the car shops at a later time to act as weighmaster. Therefore, this clerk, after

completing and making the memoranda for handling cars in the car shops, is used to do general yard work in the transportation yard the same as any other yard clerk performs.

When the switching crews which are to work at the car shops come on duty, they report to the yardmaster at the old hump yard. The yardmaster at that point tells them what cars are to be handled and on what track they are located, or are to be assembled for taking to the car shops. The crews then proceed with these cars to the east end of the shop yard, where they are furnished further detailed information by the assistant yardmaster as to what work they are to do in moving the cars from one point to another to be worked on, removing finished cars, etc. The crew that works at the west end of the shops (or the paint shop) picks up list at the scale house placed there by the shop foreman, showing what cars are to be weighed, taken out, or spotted at different places. Neither the yardmaster nor the clerk gives such lists to the conductor, and no instructions, other than the above mentioned lists, are given to the west end crew, unless the conductor of this crew needs further verbal instructions, in which event the conductor contacts the assistant yardmaster by telephone.

Therefore, when the switching crews have gotten such memoranda or lists and instructions from the assistant yardmaster, they have everything they need with which to do their work at the car shops. If any questions do arise with regard to the manner of doing the work, the instructions are that they must communicate with the assistant yardmaster who gave them their instructions when entering the shop properties. When the crews are about ready to weigh cars on the track scales at the car shops, including the light weighing of finished cars, the particular crew communicates by telephone with the assistant yardmaster, and the clerk is sent by the assistant yardmaster to the car shops to perform the weighmaster work, which is unquestionably bona fide clerical work and which is not disputed by the yardmasters,

When the clerk completes his weighmaster work, he returns to the assistant yardmaster's office and does whatever bona fide clerical work he may be assigned to do there to complete his tour of duty.

All yard crews working at Russell car shops have been instructed to the effect that they report to and receive their instructions from yardmasters, and that they are not to take any instructions from the clerk who works at the car shops. A copy of bulletin dated February 12, 1947, instructing all yard crews to this effect is submitted as carrier's Exhibit "A".

In order to prevent any confusion or the possibility of any proper ground for a claim that the clerk in question is performing yardmaster work, a bulletin was posted to all clerical employes on February 12, 1947, to the effect that the clerk who formerly had his headquarters at Russell car shops has had his headquarters changed, so that he now reports to and has his headquarters at the office of the assistant yardmaster at the west end of the new classifying yard. A copy of that bulletin is submitted as carrier's Exhibit "B".

As a further effort to prevent any confusion, a bulletin was issued on February 12, 1947, to all yardmasters to the effect that the clerk formerly having headquarters at Russell car shops would, effective February 14, 1947, have his headquarters changed and that thereafter he would report to the assistant yardmaster at the west end of the new classifying yard. A copy of that bulletin is submitted as carrier's Exhibit "C".

POSITION OF CARRIER: A resume of the development of this case is as follows:

Operations at the carrier's new car shop facilities at Russell, Ky., were begun on or about November 1, 1929. Blueprint showing the facilities in question and their relationship to other yard facilities at Russell was submitted as carrier's Exhibit "A" in Docket 315.

It was not known just what switching service would be required at the new shops or just what the final setup would be, because the carrier had no entirely similar centralized operation. To begin the operations and determine just what would be needed, a yardmaster worked at the car shops from November 5, 1929, through November 18, 1929, or 14 days. At the end of that period, it was found that a yardmaster at the car shops would not be justified and that supervision over yard crews working at the car shops could be given by other yardmasters at Russell terminal.

A grievance was filed shortly thereafter, and was handled up to and by the Yardmasters' System Board of Adjustment as Case No. 4. The Yardmasters' System Board of Adjustment denied the claim of the employes, details of which have been fully set forth in the carrier's submission in Docket 315.

The same general grievance was handled on several occasions subsequent thereto, and the request from which the present case springs was filed with the carrier on May 26, 1944. Award 321, as set forth in the carrier's Statement of Facts, has definitely disposed of Claims 1 and 3 of Docket 315, leaving as an open question only the claim that:

"The Yardmaster work, duties and authority at Russell Car Shop, Russell, Ky., be restored to the Yardmaster class and the Carrier required to bulletin and fill Yardmaster position in accordance with pertinent provisions of the Yardmasters' Agreement."

The carrier in its submission in Docket 315 has set forth in detail the work performed by the clerical position in question, showing conclusively that the work performed is bona fide clerical work, similar to that performed by clerks on railroads in general.

As set forth in the carrier's Statement of Facts, when there was failure to reach a mutually satisfactory disposition on this case after its remanding to the parties, the Carrier sought, in good faith, some manner of changing the arrangements or adjusting the situation so as to remove any possible grounds for contention by the Yardmasters that the clerk in question is (or was) performing yardmaster work. The Carrier exhibits at this point a letter it addressed to the General Chairman on January 31, 1947, such letter being designated as carrier's Exhibit "D".

Particular attention is called to the last paragraph of the letter of January 31, 1947, reading:

"We do not agree or concede that any of the clerks who have worked this job have done work coming under the Yardmaster's Agreement, and the changes we are making in the situation are not being made because of any uncertainty or recession on our part on this point. We are taking this action purely because the Board remanded the case to the parties in good faith in an effort to have it disposed of. We can make the changes we have outlined without seriously interfering with the operations. At the same time, we believe that what we are doing should certainly show to anyone our entire good faith in what we have contended throughout this case — that a yardmaster is not needed at Russell Car Shops and that the clerk who has been employed there has not been performing work within the Yardmasters' Agreement."

It will be seen that the Carrier did not and does not agree or concede that any of the clerks who have worked this job have done work coming under the Yardmasters' Agreement. The changes recently made by the Carrier were not made because of any uncertainty or recession on its part, but such action was taken purely because the Board remanded the case to the parties and the Carrier wanted to do everything that it could reasonably do to clarify the situation and eliminate every possible basis of complaint, so that the case could be finally disposed of.

The Carrier has moved in this case at every point in the best of faith and has shown by proper evidence that a yardmaster is not needed at Russell car shops, and that, likewise, clerks have not (and are not) performing work that belongs to yardmasters under their agreement.

The claim in this case should be denied.

Oral presentation desired.

OPINION OF BOARD: The issues involved in this case were previously before the Fourth Division, action of the Board being reported in Award 321, Docket 315. At the time of such action, the controversy involved three claims, the first, briefly, that Carrier violated the Yardmasters' agreement by assigning distinctive yardmaster work and duties to employes outside the purview of the Yardmasters' agreement; the second, being substantially the claim now under consideration; the third, request for compensation for losses thus occasioned.

The first and third of these were denied by the Board in said Award 321 upon the ground that said claims had been submitted to a system board of adjustment, and there denied; and that by an agreement dated February 16, 1932, the parties had agreed to submit certain controversies to such system board of adjustment and accept the decision thereof as final and binding.

The Fourth Division remanded the second claim to the field for a joint check to determine whether clerks had been doing yardmaster's work for the reason that the evidence upon such question before the Board was conflicting and inconclusive; if after such joint check the parties were unable to agree upon the facts, nevertheless leave granted to resubmit together with evidence produced during the joint check and all other pertinent evidence deemed necessary by either party.

A committee representing employes met with representatives of Carrier on September 5, 1946, agreed as to when and how a joint check should be made. The joint committee, composed of Superintendent F. W. Myers, M. E. Cridlin and B. Bryant for management and R. E. Powell and J. E. Toothman for employes, entered the Russell Car Shops that afternoon at 1:30 P.M. and commenced the check; before the same was completed, however, further disagreement resulted in failure of the Committee as a whole to agree upon a report; subsequently both employes and management produced reports, both being made a part of this record. In addition thereto, each party submits statements taken from various employes, which statements appear in the record and will not be here detailed.

Comparison of the two reports covering the work of the clerk on duty indicates that they differ more in the interpretations placed by the respective parties upon the actions of the clerk than they do upon facts observed and reported. In order to arrive at the true facts, it will be necessary for the Board to dispense somewhat with the interpretations and conclusions of both parties, especially where they be in conflict; and attempt to consider such facts as are admitted, together with any other evidence in the record bearing upon the controversy.

It appears clear from the record that operations were commenced by Carrier at its new car shops at Russell, Kentucky, on or about November 1, 1929; that a yardmaster was installed there during the period November 5, 1929, through November 18, 1929, a period of about fourteen days, after which this position was discontinued and no yardmaster has since been assigned to the shops. Carrier contends this was a trial to determine what, if any, yard switching Supervision would be necessary at the shops; that this experimental period resulted in the decision that adequate supervision would be provided through other yard supervisory forces stationed and maintained elsewhere in Russell Yard Proper.

One position of clerk is maintained for Russell Car Shops having hours of duty 12:00 Noon to 8:30 P.M. Two crews perform switching service at the

shops. Employees maintain that the clerk in question assumes the yardmaster authority and performs the yardmaster work and duties, supervising the two crews mentioned in their work and issuing instructions, oral and written, to them concerning such work.

Accepting the employees' report arising out of the abortive joint check as accurate, and also conceding the interpretations and conclusions placed thereon by the employees, it would appear the clerk is definitely performing mixed duties. At least a part of them appear to be of a supervisory nature such as are ordinarily performed by yardmasters.

It must be noted also, however, that a very substantial part of the work performed by this clerk is purely clerical in character. An additional and very substantial part of the work performed by him is in borderline territory. For example the clerk goes through the shops and receives various memoranda from the foremen and perhaps others as to the spotting or placement of various cars to be brought in for work. The clerk then sits down and assembles these various scraps of information into a switching list. This is merely a matter of compiling the information into a concise worksheet for the convenience of the switching crews. So far the work performed is clerical. Now if the clerk turns this material over to a yardmaster or assistant yardmaster and the switching is performed under the direction and supervision of that official, there is no cause for complaint. Should the clerk go out, contact the crews, and direct the subsequent work, a different situation arises.

We note from the record that under date of February 12, 1947, carrier issued three Bulletins, as follows:

"The Chesapeake and Ohio Railway Company

Russell, Ky., February 12, 1947

"BULLETIN NO. 19

ALL YARD CREWS, RUSSELL YARD:

Yard crews working at Russell Car Shops will report to and receive instructions from the Assistant Yardmaster at the west end of the new classifying yard. These yards crews will receive lists, or memoranda, showing work to be done at the car shops, from the Assistant Yardmaster. If further instructions are required, the yard crews should communicate with the Assistant Yardmaster by Telephone.

Yard crews should understand that the clerk at Russell Car Shops is not to supervise, or direct, their work. Necessary instructions for the performance of their work must be secured from the Assistant Yardmaster.

(s) F. W. Myers, Superintendent."

"BULLETIN NO. 20

Russell, Ky., February 12, 1947

YARDMASTERS, RUSSELL TERMINAL:

Effective February 14, 1947, the clerk at Russell Car Shops will report to and receive instructions from the Assistant Yardmaster at the west end of the new classifying yard.

The clerk will report for duty, and be relieved at the Assistant Yardmaster's office at the west end of the new classifying yard.

(s) F. W. Myers, Superintendent."

"BULLETIN NO. 50

Russell, Ky., February 12, 1947

TO ALL CLERICAL EMPLOYEES, RUSSELL DIVISION:

Effective February 14, 1947, the clerk at the Russell Car Shops on position No. 237, will report to and receive instructions from the Assistant Yardmaster at the west end of the new classifying yard.

(s) F. W. Myers, Superintendent.

POST: Hump Office
MS Cabin
Eastbound Yard Office
Superintendent's Office—

cc: J. D. Bennett
J. E. Garretson
J. G. Rayburn
C. S. Wetherholt
J. A. Bawsel
J. E. Walker
F. U. Simpson"

The Board feels that by the issuance of these Bulletins carrier has gone as far as it can to remedy anything in the situation at Russell Car Shops and involved in this case that could serve as a basis for claim; and that observance of the instructions in these Bulletins by employes will serve in the future to eliminate grievance over the position.

We are not required in every case to grant affirmative relief where it may be shown that a clerk, agent or other employe exercises some minor or incidental supervision over yard switching, in connection with the discharge of his other duties. We have recently held in several cases that such violation must be substantial in nature. See Awards of this Division numbered 358, 359, 363, 365, 367 and 396.

As the situation now exists, all supervision of switching operations at Russell Car Shops has been distinctly assigned to assistant yardmasters and away from the clerk in question; the clerk has been removed from contact with the yard switching crews except when directly instructed to contact them under the direction of assistant yardmasters at west end of the new classifying yards.

From a consideration of the record as a whole, this Board is the opinion that an affirmative award would not be justified in this case at this time.

FINDINGS: The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Ill., this 15th day of August, 1947.