

Award No. 1825
Docket No. 1647
2-NYC&StL-FO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Firemen and Oiler Craftsmen are improperly used on Saturdays and Sundays since August 26, 1951 to perform the work of firing stationary boiler, cleaning fires, shovel cinders at cinder pit, coal engines, water tanks, supply engines, clean diesel locomotives, operate turntable, fuel and sand diesel locomotives, clean roundhouse, and watch engines in roundhouse.
2. That accordingly the Carrier be ordered to compensate Laborers S. B. Payton and Leroy Lambert each in the amount of eight hours at the applicable overtime rates for each Saturday and Sunday that other than Firemen and Oiler Craftsmen were used to perform the aforesaid work retroactive to September 15, 1951.

EMPLOYEES' STATEMENT OF FACTS: At Toledo, Ohio under date of January 19, 1951, a bulletin was posted establishing two seven-day positions, one seven-day position on the 8:00 A. M. to 12 Noon; 12:30 P. M. to 4:30 P. M. shift and one seven-day position on the 11:00 P. M. to 3:00 A. M.; 3:30 A. M. to 7:30 A. M. shift. These two seven-day positions were filled by two firemen and oiler craftsmen with five day assignments and a relief man assigned five days per week, two days on each of the seven-day positions and the fifth day spent on work assigned by the carrier to fill out his five-day assignment. The carrier specified the duties on these positions to be that of watching engines and perform any other laboring duties commonly done by Group B and C laborers. A copy of this bulletin is submitted herewith and identified as Exhibit A.

The above bulletined positions were filled until August 26. The carrier on August 23 posted bulletins that the relief assignment was discontinued, copies of which are submitted herewith and identified as Exhibits B, C, D and E.

On August 23, 1951 the carrier posted a bulletin advertising an assignment on the 11:00 P. M. to 3:00 A. M.; 3:30 A. M. to 7:30 A. M. shift, work

Therefore, the carrier submits that there has been no violation of the current agreement nor improper use of employees; that, based on service requirements, the positions of laborers are not required on Saturdays and Sundays; and that the type of work performed by hostlers on Saturdays and Sundays is only that which is customarily performed by them and is incidental to the position of hostler. The claim is therefore without merit.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Firemen and Oilers of System Federation No. 57 claim that since August 26, 1951 hostlers have been performing laborers' (Engine Watchmen) work on Saturday's and Sundays at carrier's Clover Leaf District Roundhouse, Toledo, Ohio. They contend this is in violation of the scope of their current agreement and ask that carrier, because thereof, be required to compensate both Laborers S. B. Peyton and Leroy Lambert for eight hours at the overtime rate for each Saturday and Sunday, since September 15, 1951, on which such violation occurred.

Carrier has always had hostlers on duty at this point on around-the clock basis, seven days a week. Immediately prior to August 26, 1951 laborers (engine watchmen) were also on duty seven days a week but not on an around-the clock basis. Commencing with August 26, 1951, carrier reduced these latter positions to two, both with work weeks from Monday through Friday. This resulted in no laborers of this class being on duty on Saturdays and Sundays. It should here be stated that these laborers and hostlers belong to different crafts and are not under the same agreement. The laborers are under the Firemen and Oilers' agreement.

There are certain basic principles that should be stated before a discussion of the factual situation is developed in order to fully understand the latter.

Merely because services or duties have been required by a carrier on a six or seven-day basis does not prevent the carrier from reducing them to a five-day basis if need for the performance of such services or duties no longer exist on Saturday and Sunday and the performance thereof can be reasonably dispensed with on these days.

While Rule 1 (a) permits the staggering of the work week of regularly assigned employees in seven-day services in accordance with carrier's operational requirements and thereby, if possible, avoid relief assignments, it does not authorize the crossing of class or craft lines in doing so.

Work normally incident to a position may ordinarily be performed by the occupant thereof but when, from Monday through Friday, it has been assigned to and performed by employees of another class or craft the work belongs to that class or craft on rest days and does not flow back to the position on such rest days so as to permit the occupant of the position to perform it.

When work is not the exclusive right of any one class or craft carrier may have the employees of any class or craft perform it who have a right thereto. However, if carrier assigns it to employees of one craft or class from Monday to Friday that class or craft has the right to the same work if performed on Saturdays and Sundays and carrier cannot assign it on those days to another class or craft.

It is clearly evident that some, although not all, of the same work performed by laborers from Monday through Friday was performed by hostlers on Saturdays and Sundays. We do not say carrier should have established a relief position to perform it as it might have been accomplished by staggering the work week of the two laborers employed or on a "call" basis. What we do decide is that carrier was required to have laborers do this work on Saturdays and Sundays whenever carrier had the same work performed on Saturdays and Sundays as these laborers performed from Monday through Friday.

There is evidence that one of the claimants, and possibly both, have ceased to belong to the class who were entitled to do the work on Saturdays and Sundays. It has also been suggested that the Roundhouse has been closed and neither hostlers nor laborers are now employed at this point. Of course the claim should only be allowed for the period of time the violation continued and since the claim is made on behalf of individuals it should not be allowed for either one or the other, beyond the date they ceased to belong to the class of laborers under the Firemen and Oilers' agreement who were entitled to the work.

The claim made is for compensation on an overtime basis. Under the circumstances here shown the loss of work under the scope of the agreement should be paid for at the pro rata rate. See Awards 1387 and 1401 of this Division.

AWARD

Claim sustained as per findings at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1954.