

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul W. Richards, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILROAD COMPANY

(Patrick H. Joyce and Luther M. Walter, Trustees)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"The employees filling the 5:00 A.M. to 1:00 P.M. daily bill clerk position at the Kansas City Yard Office be compensated a minimum of two (2) hours per day at Overtime rate since February 13, 1940."

EMPLOYES' STATEMENT OF FACTS: "Prior to February 13, 1940, the assignments of clerical positions at the Kansas City Yard Office were as follows:

- 1 Inbound-Car clerk position from 7:30 A.M. to 4:30 P.M.
(meal period 12 noon to 1 P.M.)
- 1 Car Checker position from 2:00 P.M. to 10:00 P.M.
- 1 Bill Clerk position from 4:00 P.M. to 12 Midnight
- 2 Bill Clerk positions from 12 Midnight to 8:00 A.M.
- 1 regular assigned relief clerk to work the above assignments on the assigned incumbents' day of rest.

"Effective February 13, 1940, one of the 12:00 Midnight to 8:00 A.M. Bill Clerk assignments was changed with hours of 5:00 A.M. to 1:00 P.M. The other assignments remaining the same."

CARRIER'S STATEMENT OF FACTS: "The claim of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees is to the effect that the Carrier is violating Rule 39 of the Clerks' current agreement, 'Starting Time of Assignments,' reading:

'RULE 39. STARTING TIME OF ASSIGNMENTS. Where three shifts are worked covering the twenty-four (24) hour period, the starting time of each shift will be between the hours of six (6) and eight (8) A.M., two (2) and four (4) P.M., and ten (10) P.M. and midnight. Shifts other than those covering the twenty-four (24) hour period may be started at any time except between midnight and five (5) A.M.

'It is understood that under the above paragraph the carrier is not required to assign shifts in continuous service, that is, they may be started at any time during the periods stated, even though the shifts may lap each other.'

holidays shall be allowed a minimum of three (3) hours for two (2) hours' work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.'

Rule 41 provides for continuous compensation in cases where clerks are released and later required to return to duty, and is not involved in the instant case.

"The Carrier wrote Mr. Jenk on March 23, 1940, explaining that there is nothing in the schedule rules that indicates in any way that the 5:00 A. M. starting time, which has been in effect at Kansas City (except for one short period) for many years, is in conflict with the agreement.

"In a letter dated April 27, 1940, General Chairman Jenk stated that prior to February 13, 1940, there were two Bill Clerk positions assigned from 12:00 midnight to 8:00 A. M. This statement is not entirely correct as there was no similarity in the work performed by the two positions. The original or first midnight shift consists of inside work and the second midnight shift consisted of outside work. The work performed by the second midnight shift was the same as presently and formerly performed by the 5:00 A. M. shift. The positions with titles as designated by Mr. Jenk in his letter of April 27th are not now and never have been so designated; payroll titles are yard clerks.

"Rule 39 plainly states that shifts other than those covering the 24-hour period may be started at any time except between midnight and 5:00 A. M. The three shifts at Kansas City covering the 24-hour period start work at 12:00 midnight, 7:30 A. M. and 4:00 P. M. and the two additional shifts start work at 5:00 A. M. and 2:00 P. M., all according to the schedule rules.

"In view of the facts and circumstances related herein, it is the contention of the Carrier that there is no merit in this case and we respectfully request the Board to deny the claim."

OPINION OF BOARD: This case turns upon Rule 39, which reads:

"STARTING TIME OF ASSIGNMENTS. Where three shifts are worked covering the twenty-four (24) hour period, the starting time of each shift will be between the hours of six (6) and eight (8) A. M. two (2) and four (4) P. M., and ten (10) P. M. and midnight. Shifts other than those covering the twenty-four (24) hour period may be started at any time except between midnight and five (5) A. M.

"It is understood that under the above paragraph the carrier is not required to assign shifts in continuous service, that is, they may be started at any time during the periods stated, even though the shifts may lap each other."

The specific question concerns the meaning of certain words in the second sentence of above rule, i. e., "Shifts other than those covering the twenty-four (24) hour period." Petitioner's position is that these words are applicable only to shifts at points or offices where three shifts are not worked covering the 24 hour period. The carrier interprets the words as of wider application, and as being inclusive of any shift that is not one of the three covering the 24 hour period.

In the first sentence of the rule its writers, premising 3 shifts worked covering the 24 hour period, fix their allowable starting time. That accomplished, the writers then apparently advert to the matter of starting time for shifts not already covered in the first sentence. This adverting naturally entailed some manner of excluding the starting time of shifts covering the 24 hour period from application to them of the further agreement stated in the second sentence. In the opinion of this Division the purpose of the questioned words was to do this excluding. If so, the excluding from the

operation of the agreement stated in the second sentence, was of shifts covering the 24 hour period. No other purpose in using the questioned words, than that above stated, could very well be rationalized with the fairly plain language in which the rule is couched. The shift here involved, not being excluded from the second sentence provisions, came thereunder.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence finds and holds:

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 starting time of the position in question was not violative of Rule 39.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of June, 1941.