

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

UNION RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Union Railway Company, Memphis, Tenn., that the Carrier violated the Clerks' Agreement;

1. When on or about September 12th, 1940, Clerk, Mr. W. L. Crittenden the regular occupant of position of yard clerk at Georgia Street, assigned hours 10:00 P. M. to 6:00 A. M., seven (7) days per week, was notified that his position would effective Sunday, September 15th, 1940 be changed to a six (6) day per week assignment, which assignment arrangement continued in effect until Sunday, October 13th, 1940, or a period of less than one month, Mr. Crittenden being notified on or about October 12th, 1940 of the change converting the position back to a seven (7) day per week assignment.

2. That Clerk, Mr. W. L. Crittenden be compensated for wage loss sustained on Sunday—September 15th, 22nd, 29th, and October 6th, 1940, or four (4) days at \$5.19 per day, amount \$20.76 account of action of the Carrier which destroyed the "reasonable regularity of assignment" contrary to the intent and purpose of a proper application of the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: For a period of approximately two years prior to September 15th, 1940, the station clerical force at Georgia Street Yard Office, Memphis, Tenn., consisted of three regular assigned yard clerks which positions had been bulletined and assigned as seven (7) day per week positions as follows:

POSITION	REGULAR ASSIGNED OCCUPANT	ASSIGNED HOURS	DAYS PER WEEK
Yard Clerk	W. W. McCall	6 A. M. to 2 P. M.	7
Yard Clerk	M. F. Vaccaro	2 P. M. to 10 P. M.	7
Yard Clerk	W. L. Crittenden	10 P. M. to 6 A. M.	7

On or about September 12th, 1940, Mr. Crittenden, the regular assigned occupant of the position working 10:00 P. M. to 6:00 A. M. was notified that his position would be changed to a six (6) day per week assignment, hours 10:00 P. M. to 6:00 A. M., effective Sunday—September 15th, 1940.

On October 12th, 1940, Mr. Crittenden was notified that his position would be changed from a six (6) day per week assignment to a seven (7) day per week assignment effective Sunday—October 13th, 1940.

The schedule rules 18-(b) and 55 carry no time limitation for a six or seven day assignment, that is, a period of time that the assignment shall continue without a change, but it is expected that the rules shall be fairly applied. This means that in their application men are assigned to seven day jobs only when such assignments are necessary and that there is actually need for their services on the seventh day (Sunday). The Management recognizes that the intent and purposes of converting clerical force from monthly to daily workers was for the express purpose of relieving them of work on Sundays where service requirements of the railroad would permit. In the fair and reasonable application of the rules the Management also recognizes that assignments should not be made for the purpose of defeating the overtime rules of the schedule agreement, such as Rule 50 that obligates the Carrier paying for services performed on Sundays and holidays at rate of time and one-half, except to such employees as are assigned to work full time on Sundays and holidays.

In connection with the monetary claim filed by the Clerks' Organization in favor of Mr. Crittenden for four days pay—September 15, 22, 29 and October 6, 1940: Prior to change from a seven to a six day assignment this job was regularly occupied by yard clerk H. T. Severs, who worked on it up to and including September 14th when he exercised his seniority following bulletin of September 10, 1940 changing it from a seven to a six day job, upon a job of stenographer-clerk at Sargent Yard, hours 8:00 A. M. to 5:00 P. M., seven day assignment and went to work on it at 8:00 A. M., September 15, 1940. Mr. Crittenden, for whom a claim was filed for time lost on September 15th, was, at that time an extra clerk; he did not work on September 14th or September 15th but on September 16th he worked extra on a 3:00 P. M. trick and another extra man named Johnson worked on the 10:00 P. M. Georgia St. job, September 16th. Crittenden then exercised his rights and went on the 10:00 P. M. Georgia St. job, September 17th and was the successful bidder and was assigned to the job on September 23rd. Crittenden would have no monetary claim for any time lost account this job not working on Sunday, September 15th, as he was not regularly assigned to it prior to that date, and if a man had worked on the job it probably would not have been Crittenden as evidenced by the fact that a man by the name of Johnson worked on it September 16th. During the period involved in this claim—Sundays, September 15, 22, 29, and October 6, 1940—Crittenden was, during this interval of time, regularly assigned to the 10:00 P. M. Georgia St. job, Sundays September 29 and October 6, hence no award from the Board, if they render one in favor of the claimant, could properly give to Crittenden a monetary award for alleged time lost on September 15 and 22, 1940.

OPINION OF BOARD: The committee contends that the change in the assignment of the position here in question from seven to six days was a violation of the agreement in force between the parties.

Under the terms of Rule 55, "employees regularly assigned to work full time on Sundays and the seven designated holidays, and men called to fill their places on such regular assignment, will be compensated at the pro rata rate of the position."

The carrier on September 10, 1940 changed the assignment of the position of Yard Clerk at Georgia Street from seven days to six days a week. This change became effective September 15th. The clerk who held the job at the time of the change exercised his seniority rights, took another position, and was succeeded by Crittenden, the claimant here. There is some controversy between the parties as to when Crittenden's tour of duty commenced, whether it was the 15th, 16th or 17th. He apparently did not actually start his work until the 17th. But for the purpose of deciding the problem before us, we must regard his assignment as commencing when that of the preceding occupant ended.

The question is whether the change of assignment from seven days to six days was valid. The carrier contends that it had the right to make a change

of this kind "when the service requirements permit." The committee contends that such a change cannot be made as a temporary measure and calls attention to an interpretation of a similar rule agreed upon by the clerks and the officials of the Missouri Pacific Railroad Co., of which this carrier is a subsidiary, which reads as follows:

"This rule must be fairly applied so as to eliminate any opportunity for complaint of sharp practice. There must be reasonable regularity of assignment."

This proviso assented to by the management was due to the fear by the employees that the carrier there involved might, by temporarily changing assignments from seven to six days and from six to seven, circumvent the provisions of the rules relating to time and a half pay for Sundays and holidays for men not regularly assigned to work on those days.

It is unnecessary to decide what if any effect such a provision applicable to the rules in effect with that railroad has on the agreement now before us; for we are satisfied that whether such a provision is formally incorporated in the rules or not it is inherent in them and that any practice which contravenes the plain spirit of the agreement will not be countenanced merely because there is no specific prohibition against it. We do not think that the carrier would seriously contend otherwise, and certainly there is nothing in Awards 930 or 950 in conflict with such principle. The carrier's contention is summed up by its answer in rebuttal which says:

"There was reasonable regularity of assignment as the reduction from 7 to 6 days lasted for at least 30 days and business requirements justified their reduction."

A prima facie case seems here to have been made out that the carrier made merely a temporary change of assignment during a short period of slack work. The principal justification which the carrier claims is that it cannot be regarded as temporary because it lasted for thirty days. This in itself is not sufficient to rebut the presumption.

This case therefore comes within the principle laid down in Award 527.

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 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;

That the change in the assignment on September 15, 1940 from seven to six days, being intended as a temporary measure, was a violation of Rule 55 of the agreement and the claimant, who was assigned to such position on September 15, 1940, is entitled to the pro rata pay of such position for the days when he was not permitted to work.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1942.