Award No. 2282
Docket No. CL-2267

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that A. Wilson, Warehouse Foreman at Oakland freight house should have been called on Sunday, February 8, 1942 for the performance of work regularly assigned to his position and that he be compensated for monetary loss sustained account of failure of the Carrier to call him for the performance of this work.

EMPLOYES' STATEMENT OF FACTS: A. Wilson is regularly assigned to the position of Warehouse Foreman at Oakland Freight Station. The position of Warehouse Foreman at Oakland is assigned six days per week.

On Sunday, February 8, 1942 it was necessary to unload an l. c. l. automobile and to load a shipment of canned goods. The car clerk was used for the performance of this work.

The work of unloading, loading, checking, blocking, bracing and sealing l. c. l. shipments is work either performed by or supervised by the warehouse foreman.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties from which the following rules are cited:

> "Rule 21. Except as provided in Rule 22, employes notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays shall be allowed a minimum of three hours for two hours' work or less and if held on duty in excess of two hours, time and one-half shall be allowed on the minute basis.
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> "Employes who have completed their regular tour of duty and have been released, required to return for further service, if the conditions justify, may be compensated as if on continuous duty."
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> "Rule 22. Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the Railroad and who are assigned regularly to such service shall be assigned one regular day

fused. The same may be said with respect to the delivery of the truck to the army officer, who likewise put in an unexpected appearance. The work in question was not taken away from the clerks but was performed by clerk holding seniority in and attached to the same freight agency as the warehouse foreman who made the penalty claim.

Current schedule Rule 21 reads:

"NOTIFIED OR CALLED

"Rule 21. Except as provided in Rule 22, employes notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays, shall be allowed a minimum of three hours for two hours' work or less and if held on duty in excess of two hours, time and one-half shall be allowed on the minute basis.

"Employes who have completed their regular tour of duty and have been released, required to return for further service, if the conditions justify, may be compensated as if on continuous duty."

Nothing in this rule or in any other part of the schedule obligates Carrier to call a clerk under emergency conditions such as existed. A qualified clerk holding seniority in the seniority district was on duty and was used for the few minutes necessary to check the load, seal the car, and sign the bill of lading.

Even if there had existed the necessity, or if there had been opportunity, to call a clerk to take care of the work, the warehouse foreman would not have been called. He does not perform these duties during the week and one of the warehouse clerks would have been called.

Carrier contends that there is no justification for paying any clerk a penalty call, least of all the warehouse foreman.

OPINION OF BOARD: On February 8, 1942, the employe in whose behalf this claim is filed was the regularly assigned Warehouse Foreman at the Carrier's Oakland Freight House, on a six-day work assignment, Monday through Saturday. It appears that his duties, in general, covered the work of supervising the loading, unloading, checking, blocking, bracing and sealing of freight arriving at, or delivered from the warehouse, although it is contended by the petitioner that, at times, he did or assisted in the work described. We are given to understand that other employes, probably warehouse clerks, worked under him. On the same date there was a position in the Freight Agent's office, classed as Car Clerk, a seven-day job, and the occupant, under the provisions of Rule 22 of the Clerks' Agreement, worked his assignment continuously, and was paid at straight time rates, he being treated as an employe necessary to the continuous operation of the railroad.

It is the contention of the petitioner that the positions of Warehouse Foreman and Clerk, and Car Clerk, especially where they are worked on six and seven-day assignments, respectively, as in this case, are distinct and separate, and that neither can be called to do the work of the other, and Rules 21 and 22 of the current Clerks' Agreement are cited in support of this contention. These rules read:

"Rule 21. Except as provided in Rule 22, employes notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays shall be allowed a minimum of three hours for two hours' work or less and if held on duty in excess of two hours, time and one-half shall be allowed on the minute basis.

"Employes who have completed their regular tour of duty and have been released, required to return for further service, if the conditions justify, may be compensated as if on continuous duty."

"Rule 22. Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the Railroad and who are assigned regularly to such service shall be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty shall be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday shall be paid for at straight-time rate.

"When employes request in writing that they be allowed to work their assignments continuously instead of being given one day off in seven, or when it is impossible for the Railroad to provide relief on continuous seven-day assignments, payment at straight-time rates instead of time and one-half, shall apply to the assigned hours of such employes.

"Employes who work regular seven-day assignments at straight time rates will be given as much time off duty on one day each week as circumstances will permit, without deduction in pay. This provision will be interpreted liberally by the Railroad."

February 8, 1942, was a Sunday, and the employe claimant's day off. Between 9:00 A. M. and 12:00 noon of that day, the driver of an army truck insisted on loading for shipment 60 cases of canned goods; and about the same time an army officer appeared, and demanded delivery of an army truck which had been delayed in transit. The services demanded were urgent in their nature, and the call therefor unexpected by the Carrier. The shipment of canned goods was checked and loaded, the car sealed, and bill-of-lading signed by the Car Clerk then on duty. The army truck was driven from the automobile platform ramp by the army officer, after the freight car had been there placed, and the Car Clerk seems to have done no work in connection with this delivery, except, perhaps, the supervision thereof. The Car Clerk did the work in question at the direction of some Carrier official, and no effort was made by the Carrier to call for this work, the claimant employe, or any other employe whose regular duty it was to do this character of work; and in failing to do so, it is contended that it violated the agreement.

As we understand the position of the petitioner, it is not contended that the employe claimant had the exclusive right to do this work, but rather that he was one of those who could and should have been called therefor; that the Carrier failing to call any person entitled to perform the work, and, on the contrary, assigning the same to a person not entitled thereto, should be required to compensate one of the persons entitled to the work; and that claimant being the only person protesting the Carrier's action and making claim to compensation, is entitled to be paid for three hours' work at the rate of time and one-half.

The Carrier's position is that the case being one of emergency, and the demand for the services urgent, it was justified in assigning the work to an employe working in the same office, in the same general character of service, and in the same seniority district, rather than cause possible or even probable delay in service, from calling an employe on his off day, for the work in question.

There is much to recommend this view, and had Carrier made any effort to contact the claimant, or any other person entitled to do the work, and failed, the emergency situation would, in our opinion, have fully justified the assignment of the work to the Car Clerk. But the Carrier made no such effort, nor does the record show that any particular inconvenience would have been

suffered, by the persons demanding the service, from the short delay which might have resulted from calling, or attempting to call, some person whose regular duty it was to do such work. Clearly, we think, what the Carrier did and failed to do was, at least, a technical violation of the current agreement; and the question is whether this Board would, under these conditions, be justified in overlooking the violation, and in denying the claim.

As this Division has often said, it is assumed that agreements are made to be kept. Their strict enforcement may create isolated situations which make it seem unreasonable, if not absurd, to enforce them. But it is the integrity of agreements that is at stake, and unreasonable results, in isolated cases, do not justify us in ignoring their plain provisions. If we begin that practice, where, and in what circumstances, will we draw the line as to what is reasonable and what is not. The Carrier may well have believed that, for this small amount of work, and to insure prompt service, it was justified in ignoring the rule, but we, as a Board, cannot approve its action without taking from someone work to which, under the agreement, he was entitled. Agreements must be upheld, in order to maintain those stable and friendly relations between employe and carrier which bargaining agreements, and Boards of Adjustment, were and are designed to promote.

We think it unimportant that if the Carrier had elected to call an off duty employe for this work the claimant would not, or might not, have been called. We think the record shows that while his principle office was to supervise others in this type of work, he, himself, did such work. It would be strange, indeed, if he did not. No claim is filed on behalf of any other person, and the allowance of this claim will preclude another claim for the same work. The Opinion of this Board in Award No. 1646 covers this point and deserves quotation:

> "The Carrier contends, however, that under the rule as interpreted North was not entitled to be called. The essence of the claim is by the Organization for violation of the agreement. The claim for the penalty on behalf of North is merely an incident. That the claim might have been urged in behalf of others having, as between themselves and North, a prior right to make it, is of no concern to the Carrier. Awards 571, 1058, and 1605. That does not relieve it of the obligation to pay the rate stipulated for a call. The others are making no claim; and if they should the Carrier would not be required to pay more than once."

The claim will be sustained solely in the interest of maintaining the integrity of the current agreement, and as a penalty for what we believe was a violation thereof. As stated by the Emergency Board created by the President in its report of February 8, 1937,

> "The penalties for violations of rules seem harsh and there may be some difficulty in seeing what claim certain individuals have to the money to be paid in a concrete case, yet, experience has shown that if rules are to be effective there must be adequate penalties for violation."

Here the amount of money involved is small, and the penalty not harsh; but neither fact should have any bearing on our decision on the basic principle involved.

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 employe involved in this dispute are respectively carrier and employe 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 Carrier in calling a Car Clerk to do work to which the Warehouse Foreman, or those working under his supervision, were entitled, on their off duty day, Sunday, February 8, 1941, violated the current agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of August, 1943.