

Award No. 3054

Docket No. CL-3092

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

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

(a) The regular six (6) hour Sunday assignment of the day Ticket Clerk position and the four (4) hour Sunday assignment on the night Ticket Clerk position at Wellington, Kansas, is violative of the provisions and intent of the current agreement between the parties; and,

(b) Claim that R. B. Haynes and B. Y. Emerson and/or other occupants of the day and night Ticket Clerk positions, shall be paid for eight (8) hours at the rate of time and one-half for all Sunday service performed by them since October 1, 1942, within the spread of their regular week day assignment.

STATEMENT OF FACTS: Prior to October 1, 1942 day Ticket Clerk at Wellington was assigned 8:30 a.m. to 5:30 p.m., with lunch period 12:00 noon to 1:00 p.m., seven (7) days per week; the night Ticket Clerk was assigned 9:30 p.m. to 6:30 a.m., with lunch period 1:30 a.m. to 2:30 a.m., seven (7) days per week.

Effective October 4, 1942 the hours of assignment of these positions were changed, the day clerk being assigned 8:30 a.m. to 5:30 p.m., with lunch period 12:00 noon to 1:00 p.m., six (6) days per week and with a Sunday assignment of 9:30 a.m. to 11:30 a.m. and 1:30 p.m. to 5:30 p.m.; the night clerk being assigned 9:30 p.m. to 6:30 a.m., with lunch period 1:30 a.m. to 2:30 a.m. six (6) days per week with a Sunday assignment of 12:15 a.m. to 2:15 a.m. and 4:15 a.m. to 6:15 a.m. Notice of change in Sunday hours of assignment contained in a letter dated October 1, 1942, over the signature of Agent G. E. Honey, addressed to the occupants of these positions reads as follows:

"I am instructed by Superintendent Prentice that effective Sunday, October 4, 1942, your Sunday hours will be as follows:

"For day Ticket Clerk 9:30 a.m. to 11:30 a.m. and 1:30 p.m. to 5:30 p.m., and no relief day.

"For night Ticket Clerk Sunday hours effective next Sunday, October 4th, will be 12:15 a.m. to 2:15 a.m. and 4:15 a.m. to 6:15 a.m., with no relief day.

"Of course you gentlemen will be expected to meet trains 14, 1, 2, 23 and 24.

"These Sunday hours will be effective until further notice."

(Case No. A-835), and was subsequently submitted to arbitration. The proposed adoption of a similar rule is also involved in an existing dispute between the Brotherhood of Railway Clerks and the Texas and Pacific Railway, which has now been referred to a board of arbitration. Attention is also directed to the National Mediation Board's Case No. A-1618 covering a dispute between the Brotherhood and the Missouri Pacific Lines in Texas, which involved the adoption of a proposed rule which would provide for the payment of a minimum allowance of eight hours at double time for service performed on Sundays.

Both the standard "Basic Day" and "Sunday and Holiday" rules were either included in existing agreements, or were involved in the proposed revision of existing agreement rules, in each of the aforementioned rules disputes, and it is thus apparent that the Brotherhood of Railway Clerks is in complete agreement with the Carrier's contention that the basic day rule does not, of itself, support the payment of a minimum day of eight hours at time and one-half for less than eight hours service on Sundays. They have likewise recognized that the payment of a minimum day of eight hours at time and one-half for work performed on Sundays and holidays may only be secured through the process of negotiation and other procedures provided for by the amended Railway Labor Act. By this actions on other Carriers they have recognized that the Adjustment Board has no authority to extend or broaden the terms of an existing agreement, and the instant claim, should, therefore, be denied.

In conclusion, the Carrier asserts that:

(1) In the absence of proper authority from Messrs. R. B. Haynes, B. Y. Emerson and the other unidentified claimant employees authorizing the collective bargaining agent to represent them in the handling of this dispute, the Third Division, National Railroad Adjustment Board is without jurisdiction to render an award.

(2) Article VIII of the Clerks' Agreement clearly supports the Carrier's payment of time and one-half for the actual work performed by the claimant employees on Sunday.

(3) Sections 1 and 6-a of Article VI of the Clerks' Agreement, relied upon by the Employees, are inapplicable and do not support the instant claim.

(4) The conclusions of the majority in Third Division Awards 1178, 2622 and 2744 support the Carrier's interpretation of the involved agreement rules, and warrant a denial of the Employees' claim.

(5) The instant claim is an attempt to modify and extend the terms of existing agreement rules which may only be changed by negotiations pursuant Section 6 of the amended Railway Labor Act and not by an award of the National Railroad Adjustment Board.

The Carrier has not been favored with nor privileged to review the submission of the Organization in this dispute, and is, therefore, not informed with respect to any alleged facts, contentions or other material which such submission may contain. The Carrier accordingly reserves the right to submit such additional facts and evidence as it may conclude are required in reply to the ex parte submission that the Organization intends to file with the Board, as per notice of its Grand President dated May 29, 1945, or any subsequent oral argument or briefs of the Organization in this dispute.

OPINION OF BOARD: This is a claim for eight hours pay at the time and one-half rate for all Sunday service performed by Claimants since October 1, 1942, within the spread of their regular week day assignment.

Prior to October 1, 1942, the day Ticket Clerk at Wellington, Kansas, was assigned 8:30 a.m. to 5:30 p.m., with a one-hour lunch period, seven days per week. The night Ticket Clerk was assigned 9:30 p.m. to 6:30 a.m., with a one-hour lunch period, seven days per week. Effective October 4, 1942, the foregoing assignments were modified as to the Sunday work. The day Ticket Clerk's Sunday assignment after the change was from 9:30 a.m. to 11:30 a.m. and 1:30 p.m. to 5:30 p.m. The night Ticket Clerk's assignment after the change was from 12:15 a.m. to 2:15 a.m. and 4:15 a.m. to 6:15 a.m. It is the contention of the Organization that these positions are necessary to the continuous operation of the Carrier and are required to be filled 8 hours a day and seven days a week. The claim is for 8 hours at time and one-half rate for all Sunday service performed since October 1, 1942. Rules of the current Agreement applicable to the present controversy are:

"Except as otherwise provided in these rules, eight (8) consecutive hours work, exclusive of the meal period, shall constitute a day's work." Art. VI, Sec. 1.

"Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) consecutive hours' notice to the employees affected." Art. VI, Sec. 6-a.

"Work performed on Sundays and the following legal holidays * * * shall be paid at the rate of time and one-half except that employees necessary to the continuous operation of the Carrier and who are regularly assigned to such service will 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 will be paid at the rate of time and one-half; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate." Art. VIII, Sec. 1.

We are of the opinion that the positions of day Ticket Clerk and night Ticket Clerk are necessary to the continuous operation of the Carrier. As was said in Award 2280, "a careful study of awards bearing upon the intended meaning of this phrase, leads us to the conclusion that, very definitely, it has come to be accepted as applying to work necessary to keep the trains running and the railroad in physical operation." It seems clear to us that the selling of tickets to prospective passengers is necessary to the operation of the carrier. Unless there are passengers to transport, there would be little reason to operate passenger trains. We think that the positions of the Claimants come within the meaning of this language. See Award 3037, Docket CL-2991.

Claimant's positions being necessary to the continuous operation of the Carrier, the Carrier was obligated to assign them on a basis of 365 days per year. This means that the positions must be filled seven days a week. Awards 1803, 2536, 2783 and 3049. The fact that the employee may be assigned one day off in seven makes the position no less a 365-day assignment. Section 1, Article VI, of the current Agreement defining a day's work as eight (8) consecutive hours exclusive of meal period applies to each day of the assignment. Likewise, Article VI, Section 6-a, providing for a regular starting time applies. Award 1307. Consequently, we are of the opinion that an employee assigned to work during the regularly assigned tour of duty must be deemed to have been assigned to perform the regular eight-hour assignment for that day. And when, as here, the employee assigned is working his assigned day in seven off duty, he is entitled to the time and one-half rate of the position.

It is significant that the Agreement in existence immediately prior to the current agreement specifically provided for working a less number of hours on Sundays and holidays than were assigned on the regular week day assignment. See Article IX, Section 2, Agreement of December 1, 1929. This affords a very persuasive argument in support of the interpretation

we have herein given the rule. When a rule is taken from an agreement, it not only eliminates the rule but it evidences an intent that the provisions of the eliminated rule are not to remain in effect by interpretation of other portions of the agreement. Award 2071.

We necessarily conclude that the assignment of an employe occupying a position necessary to the continuous operation of the carrier, to work his assigned day off in seven is entitled to eight hours' pay at the time and one-half rate.

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 Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1945.