

Award Number 3101

Docket Number CL-3004

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Curtis G. Shake, Referee)

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

(a) Carrier violated and continues to violate the rules of the Schedule for Clerks effective August 1, 1929, by assigning to and requiring telegraphers at Peru, Indiana, to perform clerical work covered by the rules of the Schedule for Clerks, which clerical work is defined in Rule 1 of the Schedule for Clerks.

(b) Carrier violated Rule 1 of the Schedule for Clerks by issuing bulletin notice dated April 30, 1941, advertising position of Ticket Clerk-Baggage-man in the ticket office at Peru, Indiana, as daily except Sunday, and assigning a Ticket Clerk-Baggage-man to work Monday to Saturday, inclusive, while telegraphers were required to perform duties of Ticket Clerk-Baggage-man on Sundays and legal holidays.

(c) Carrier violated Rule 8 of the Schedule for Clerks by declining to assign the position of Ticket Clerk-Baggage-man, bulletin notice dated April 30, 1941, to seven days per week, and requiring telegraphers at Peru passenger station to perform duties of the Ticket Clerk-Baggage-man on Sundays and legal holidays.

(d) Carrier is violating the provisions of the standard Sunday and Holiday Rule, effective December 26, 1943, as per Memorandum of Agreement dated December 11, 1943, signed at St. Louis, Missouri, by requiring telegraphers at Peru, Indiana to perform duties of Ticket Clerk-Baggage-man assignment on Sundays and legal holidays, and denying occupant of the position of Ticket Clerk-Baggage-man the right to perform duties on Sundays and Holidays, and which duties are performed by him Monday to Saturday, inclusive.

(e) Position of Ticket Clerk-Baggage-man be rebulletined specifying service seven (7) days per week, with Sunday designated as the assigned day off for the occupant, in keeping with the provisions of the standard Sunday and Holiday Rule effective December 26, 1943, the position to be filled eight (8) hours on Sundays and legal holidays by the regular occupant of the position or a qualified relief clerk, as provided for in the existing Sunday and Holiday Rule. The occupant or occupants of the position to be compensated for eight (8) hours at pro rata rate of the position for each Sunday subsequent to April 30, 1941, up to and including December 25, 1943, less any compensation realized

on any Sunday during this period of time due to occupant being used to perform service and paid on a call basis.

The occupant or occupants of the position to be compensated for eight (8) hours at punitive rate of the position on each of the seven legal holidays during period April 30, 1941 to December 25, 1943, inclusive, less any compensation realized as a result of being used on a call basis on any legal holiday during this period of time.

The occupant or occupants of the position to be compensated for eight (8) hours at punitive rate of the position for each Sunday and legal holiday subsequent to December 25, 1943, less any compensation realized as a result of being used on a call basis on Sunday and legal holidays subsequent to December 25, 1943.

EMPLOYEES' STATEMENT OF FACTS: Prior to issuance of bulletin notice dated March 20, 1933, position of Ticket Clerk-Baggage man at Peru, Indiana, had been assigned seven days per week and the occupant of the position worked the daily assignment of eight hours on each Sunday and legal holiday, and was compensated in accordance with Rule 8 of the Schedule for Clerks. Bulletin notice dated March 20, 1933, changing position from seven to six day weekly assignment is reproduced below:

"Montpelier, Ohio, March 20, 1933

Clerical Employees	All	Departments	
Position (A) Ticket Clerk-Baggage man	Clerk, (B)	Office	
(C) Peru, Indiana	Vacant, Salary (D)	\$5.10 per day	
Bids will be accepted up to and including March 25th, 1933			
Remarks: (E) Hours 8AM to 5PM			

(Changed from seven to six day weekly assignment)

(Signed) R. A. Messmore
(Title) Superintendent"

Subsequent to March 20, 1933 and up to February 22, 1938, the occupant of the position of Ticket Clerk-Baggage man was used on each legal holiday listed in Rule 8 of the Schedule for Clerks, for the full eight hours of the daily assignment and was compensated eight hours at punitive rate of the position, however, was not permitted to work on Sundays only when required to work on a call basis.

Effective with date of February 22, 1938, Washington's Birthday, one of the seven legal holidays, use of the Ticket Clerk-Baggage man to perform the duties of said position on legal holidays, was discontinued and thereafter the occupant of the position was not permitted to perform the duties of his assignment on Sundays and legal holidays, unless he was notified to report on a call basis. Telegraphers were henceforth required to assume duties of Ticket Clerk-Baggage man on Sundays and legal holidays. This action taken irrespective of various protests made by the clerks' committee.

Position of Ticket Clerk-Baggage man was re-bulletined on April 30, 1941, following death of Mr. G. B. Smith, who had been assigned to the position for a number of years. Bulletin notice is reproduced below:

"Montpelier, Ohio, April 30th, 1941

Clerical Employees	All	Department:
Position (A) Ticket Clerk-Baggage man	Clerk (B) Ticket Office.	
(C) Peru, Ind.	Vacant, Salary (D) \$5.50 per day.	
Bids will be accepted up to and including May 5, 1941.		
Remarks: (E) hours of assignment 8 AM to 5 PM (CST) Daily except Sunday.		

One hour for lunch.

(Signed) H. G. Pace
(Title) Superintendent."

and Telegraphers to perform clerical work or to restrict in any way the right of the Carrier to permit or require such employees to perform clerical work under the circumstances surrounding the case under consideration.

In support of the position of the Carrier in that connection, attention is invited to the Carrier's original submission in the disputes covered by Docket No. CL-2394, Award No. 2437 and Docket No. CL-2396, Award No. 2438 of the National Railroad Adjustment Board, Third Division.

The alleged disputes covered by the aforementioned dockets were submitted to the Board by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and were subsequently withdrawn from the consideration of the Board by that organization before hearing had been held, and pursuant to Grand President George M. Harrison's letter of December 29, 1943, directed to Mr. H. A. Johnson, awards were rendered dismissing the cases covered by Dockets Nos. CL-2394 and CL-2396.

As shown by the Carrier's Statement of Facts, the position of Ticket Clerk-Baggage-man at Peru was established as a six (6) day position and the incumbent thereof assigned to work from 8:00 a.m. to 5:00 p.m. six (6) days per week, from Monday to Saturday, inclusive, effective March 25, 1933, and on and after that date the incumbent of the position involved was not required to perform service on Sundays and holidays on account of the services of a clerk not being necessary or required on such days, and in that connection, attention is invited to Rule 8 (a) of the Schedule for Clerks.

The contention of the Committee that the Carrier violated Rule 8 of the Schedule for Clerks by declining to assign the position of Ticket Clerk-Baggage-man to work seven (7) days per week, when that position was re-bulletined on April 30, 1941, is wholly without basis under the rules of the aforementioned agreement.

The contention of the Committee that the Carrier violated the provisions of the so-called standard Sunday and Holiday Rule, effective December 26, 1943, by not requiring the incumbent of the position of Ticket Clerk-Baggage-man to work on Sundays and legal holidays on and after that date is also without foundation.

The alleged claim set up in paragraph (e) of the Committee's ex parte Statement of Claim is not supported by the rules (including the so-called standard Sunday and Holiday Rule, which became effective on December 26, 1943) of the Schedule for Clerks.

The services of the position of Ticket Clerk-Baggage-man at Peru are not required on Sundays and holidays and, therefore, it is obvious that the said position is not a position necessary to the continuous operation of the railroad and the use of the Telegraph Operators to sell tickets for Trains Nos. 1 and 4 on Sundays and holidays and handle the baggage involved in connection therewith is not a violation of the rules involved.

The so-called standard Sunday and Holiday Rule, which became effective on December 26, 1943, does not in any way restrict the right of the Carrier to create or maintain six (6) day positions and to assign the incumbents of such positions to work six (6) days per week, from Monday to Saturday, inclusive.

In view of that fact and the further fact that the position of Ticket Clerk-Baggage-man at Peru is a six (6) day position, from Monday to Saturday, inclusive, it is obvious that the said position does not fall within the purview of the so-called standard Sunday and Holiday Rule and, therefore, the contention of the Committee in that connection is wholly without basis.

The foregoing shows that the alleged claim set up in the Committee's ex parte Statement of Claim is not supported by the rules of the Schedule for Clerks, therefore, the contention of the Committee should be dismissed and the claim denied in its entirety.

OPINION OF BOARD: Prior to March 20, 1933, the position of Ticket Clerk-Baggage-man, Peru, Indiana, was assigned to work daily, seven days per week, under the provisions of Rule 8 of the Agreement effective August 1,

1929. Effective March 25, 1933, said position was changed from a seven to a six-day per week assignment. Under the latter assignment, all Sunday work and, after February 22, 1938, all holiday work, was assigned to telegraphers, not covered by the Agreement with which we are here concerned. By reason of the death of the incumbent, the position of Ticket Clerk-Baggage man at Peru was, on April 30, 1941, rebulletined as a six-day position, with the same arrangement as theretofore with respect to Sundays and holiday work. On December 11, effective as of December 26, 1943, Rule 8 of the 1929 Agreement was temporarily suspended and superseded by the standard Sunday and Holiday Rule currently in effect.

The claim presents two substantial questions: (1) Whether the Sunday and holiday work assigned to telegraphers, as detailed above, properly belonged to the occupant of the position on whose behalf this claim is asserted; and (2) Whether subsequent to December 26, 1943, said position was necessary to the continuous operation of the Carrier, so as to entitle the regular occupant thereof to eight hours at rate of time and one-half for each Sunday and holiday that said position was worked by others.

The first question relates to the application of the Scope Rule of the Agreement to the position in controversy. Said Rule specifically enumerates ticket clerks and station baggagemen as among those covered. This, plus the fact that prior to March 25, 1933, the Ticket Clerk-Baggage man was assigned seven days per week and performed the Sunday and holiday work in issue, requires us to hold that said work properly belonged under the Clerks' Agreement and to the occupant of the position here being considered. See Awards Nos. 2858 and 2549.

It is true, as was pointed out on behalf of the Carrier, that prior to July 31, 1930, all the work, clerical and otherwise, in connection with the sale of tickets and handling of baggage at Peru was performed by telegraphers covered by another agreement; and it is likewise true, as was recognized and declared in Award No. 615, that Scope Rules may not always be construed as embracing all the classes of work generally enumerated therein, but may be modified as to their application by other contractual understandings, express or implied. The above factors are not of controlling importance here, however, in view of the specific language of the Scope Rule with which we are confronted, and the absence of other contractual claims to the work in controversy, as is evidenced by the declared attitude of the telegraphers employed in the office. Award No. 3054, recently written by Judge Carter and concurred in by this Board, is conclusive with respect to the second question stated above.

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 parties waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively carrier and employee 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 violated the applicable Agreement as charged in the claim.

AWARD

Claims (a) to (e) inclusive sustained as to the claimant W. B. Cresham.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 31st day of January, 1946.