

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
R. R. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF R. R. CO.; THE ORANGE &
NORTHWESTERN R. R. CO.; IBERIA, ST. MARY & EASTERN
R. R. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.;
NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA &
NORTHERN R. R. CO.; SAN ANTONIO SOUTHERN RY.;
HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH
SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE
CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.

(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at Palestine, Texas,
December 22, 1945 through April 5, 1946, when it assigned two hours of
Group 2 work (calling crews) to the Crew Dispatcher, a Group 1 employee,
who holds no seniority rights in Group 2. Also

(b) Claim that Crew Caller P. H. Bower be paid two hours overtime
each day December 22, 1945 through April 5, 1946.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 22, 1945
the Carrier employed Callers at Palestine, Texas, whose duties are to call
train and engine crews. These employees were assigned and worked—

First trick	8:00 A. M. to	4:00 P. M.
Second trick	4:00 P. M. "	12:00 M. N.
Third trick	12:00 M. N. "	8:00 A. M.

The above assignments covered the entire 24 hours of the day.

The Carrier also employed a Crew Dispatcher who exercises supervision
over the Callers and the duties of this position, as shown on bulletin, are—

their respective tours of duty. The only objection made by the Employees or claim presented has been the claim here involved as a result of the Crew Dispatcher at Palestine calling crews between the hours of 2:00 P. M. and 4:00 P. M., during the period of this claim at which time no Crew Caller was on duty.

Furthermore, assuming, but not admitting, that the First Trick Caller is entitled to two hours overtime each day account of the Crew Dispatcher calling crews on some days during the period in question, the claim as set forth in the Employees' Ex Parte Statement of Claim reading:

"Claim that Crew Caller P. H. Bower be paid two hours overtime each day December 22, 1945 through April 5, 1946."

is without basis. As shown by Carrier's Exhibit "A" the Crew Dispatcher did not call crews between the hours of 2:00 P. M. and 4:00 P. M. each day during the period December 22, 1945 through April 5, 1946. The record shows that the Crew Dispatcher called crews on only 53 days.

When consideration is given to the fact that:

1. There is no rule in the Clerks' Agreement prohibiting the higher rated position of Crew Dispatcher from calling crews during his tour of duty;
2. There was no violation of the Clerks' Agreement in the assignment of the First Trick Crew Caller—going to work at 6:00 A. M. instead of at 8:00 A. M.;
3. There was no reduction in the force employed in this office for the purpose of calling crews;
4. There was no reduction in the hours of assignment of the claimant or any other members of the force, that all continued to work a full eight hours for which they were allowed a day's pay;
5. Neither the claimant nor any other member of the Crew calling force suffered any loss in earnings as a result of the Crew Dispatcher calling crews on certain days during the period in question;
6. The Crew Dispatcher called crews prior to the period of this claim, during the period of claim other than between the hours of 2:00 P. M. and 4:00 P. M., and subsequent to the period of this claim without any protest or claim submitted as a result thereof;

it is the position of the Carrier that the contention and accompanying claim of the Employees in the instant case is without justification and should, therefore be denied.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The facts in this case are simple and not in dispute. For some time prior to December 22, 1945, the Carrier employed at Palestine, Texas, three crew-callers (Group 2) on round-the-clock shifts and one crew dispatcher (Group 1). The crew-callers' tricks started at 8:00 A. M., 4:00 P. M. and midnight. The dispatcher worked from 8:00 A. M. to 5:00 P. M. with an hour out for lunch. The crew dispatcher did a certain amount of crew-calling while he was on duty. The work load in the early morning became heavier than one crew caller could handle, and so, on December 22, the first-trick caller had his hours changed to 6:00 A. M. to 2:00 P. M. This left no one save the crew dispatcher to call crews between 2:00 P. M. and 4:00 P. M. On April 6, 1946, the first-trick caller was restored to his old hours—8:00 A. M. to 4:00 P. M.

The claim is for overtime for the first-trick caller from December 22, 1945 throughout April 5, 1946, for the two hours daily which the Organization claims is owed him because the Carrier violated the seniority rules (1, 2,

3, 5, 6, 7) of the Agreement. The Organization contends, in brief, that the Carrier gave Group 2 work to a Group 1 employe who held no Group 2 seniority, thereby depriving a Group 2 employe of work rightfully his, in violation the intent of the above-cited rules, read together.

The Carrier sees nothing in the Agreement to prevent Group 1 employes from performing Group 2 work, and cites numerous awards of this Board (especially 2011) upholding the right of a carrier to assign Group 2 work to Group 1 employes. The Carrier buttresses its argument factually by its statement that no one was laid off, or was paid ~~less~~ while the schedule was changed that he was paid before or after. The Carrier also points out that the change in the first-trick caller's hours was made strictly in conformity with Rules 21, 37 and 42 of the Agreement.

The Organization does not challenge this last statement, but dismisses it as irrelevant. Nor does the Organization challenge the fact that the first-trick caller suffered no reduction of pay by the change in hours. The Organization rests its case on the seniority rules of the Agreement. It does not contend that the crew dispatcher should never call a crew. It **does** contend that he should not be given a crew-calling assignment which would deprive Group 2 employes of work when he held no Group 2 seniority.

In this case, as the basis of the Agreement and the facts before us, we agree. This Board has held many times that seniority rosters, by districts, prevented carriers from turning the work of those on one district seniority roster over to those on another. (Award 1808 and others cited therein.) We previously have carried this principle over to a case where group rosters were concerned (Award 2585).

There is no doubt that the Carrier deprived a crew-caller (Group 2) of work in the instant case. The Carrier's contention that there was little or no crew calling to do on the days between 2:00 and 4:00 P. M. on the days in question is without merit. "Work", in a case like this, means being on the job.

The Organization's claim for overtime for the first-trick caller appears to be the logical penalty in this case. The only alternative would be a "call" for a fourth crew-caller which would amount to the same penalty as far as the Carrier is concerned.

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 Carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1947.

DISSENT TO AWARD 3656, DOCKET CL-3618

We dissent from the conclusions upon which this award is based.

The Opinion, after taking cognizance of the Board's prior recognition of the integrity of seniority rosters by seniority districts, proceeds to unwarrantedly extend this recognition to a group subdivision of a single district roster upon a mistaken conception of the purport of Award 2585.

The lack of discernment in distinguishing the agreements involved in Award 2585 and the confronting case is palpable, and we must record our disagreement that Award 2585 by its Opinion considered in the light of the facts warrants the conclusion here expressed, "We previously have carried this principle over to a case where *group* rosters were concerned (Award 2585)." To illustrate: The Agreement in Award 2585, under its Rule 30—Seniority Rosters and under the caption **Coast Division**, separates the seniority district into *six integral rosters* of express definition, not by *groups* of employes in the definitive sense of the Scope rule but instead by geographical location and departments. The claim dealt solely with the use of freight house employes of Roster No. 4 in performing the work of passenger station employes of Roster No. 5. In the confronting case, the seniority rules provide only that the *single* seniority district roster of the **Palestine Division** with its expressly defined geographical limitations shall be subdivided within itself into the three groups provided in the Scope rule. The claim deals with the use of a crew dispatcher clerk on this roster who performed crew caller work of this same roster and in the same office.

Although the record is conclusive in its showing that there was no crew calling to be done during the involved hours on half of the days of the claim period, nevertheless the Opinion attempts to buttress the sustaining of the monetary claim by a pure assumption that has no support in the record, to the effect, "The only alternative would be a 'call' for a fourth crew-caller which would amount to the same penalty as far as the Carrier is concerned."

/s/ R. F. Ray
/s/ C. P. Dugan
/s/ R. H. Allison
/s/ C. C. Cook
/s/ A. H. Jones