

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee that the carrier violates the rules of the Clerks' Agreement at Croxton, New Jersey, when on May 5, 1946, and subsequent Sundays it denied the Assistant Chief Clerk the right and opportunity to work overtime on his position, and

That carrier shall now compensate employe D. Crowley at time and one-half rate for Sunday, May 5, 1946, and each subsequent Sunday work was performed on his position at Croxton, New Jersey by Chief Clerk Decker.

EMPLOYEES' STATEMENT OF FACTS: Mr. Crowley, Assistant Chief Clerk, Croxton Yard Office, Croxton, New Jersey is assigned to work 6:00 A. M. to 2:00 P. M., Monday to Saturday, inclusive, position being established as a six day position. For a long period of time prior to May 5, 1946, this position worked seven days per week, and Mr. Crowley was paid time and one-half for work performed on his seventh day. On Sunday, May 5th, and subsequent Sunday, Mr. Crowley was denied the right to work Sundays and the work ordinarily attaching to his position, Monday to Saturday, inclusive, was performed by Mr. Decker the Chief Clerk whose position is classified as a position necessary to the continuous operation of the carrier.

POSITION OF EMPLOYEES: There is in effect between the parties an Agreement bearing an effective date of December 1, 1943, amended July 1, 1945, which contains the following rules:

Rule 1 (Scope) reads as follows:

"(a) These rules shall constitute an agreement between the Erie Railroad Company and its clerical, office, station and storehouse employes as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes and shall govern the hours of service, working conditions and rates of pay of the following positions and employes of the Erie Railroad Company, subject to such modifications and exceptions as are set forth herein:

GROUP 1:

Clerks. Employes who regularly devote four (4) hours or more per day to the compiling, writing and/or calculating incident to keeping records and accounts transcribing and writing letters, bills, reports, statements, and similar work, and to the operation of office mechanical equipment and devices in connection with such duties,

seventh day on May 5, 1946, and all subsequent Sundays and Holidays thereafter.

In conference on the property concerning this matter, the Employees did not present any material facts to show a violation of the rules in support of their claim on behalf of Employee Crowley. Carrier has consistently proven that Crowley's position is scheduled to work only six days and that it is not a seven day position. There is no guarantee of seven days work and Carrier pays Clerk Crowley at a penalty rate when and if he is notified to work on Sunday.

The required number of Yard Clerks are assigned to do the work at Croxton, N. J. Yard on Sundays and Holidays. The clerical work required to be done at this yard cannot specifically be assigned to the same Yard Clerk each day since the work of a clerk is dependent on the various circumstances and conditions as they exist each day. It will fluctuate in accordance with the arrival and departure time of trains, increase or decrease in business, elimination of yard engines, special yard checks and any other daily changing conditions.

Clerks who are not regularly assigned to work on a seven day position and who are notified to work extra on Sunday are paid at a penalty rate for all Sunday work. Clerk Crowley is in this category.

There is no merit to this claim and it should be denied for the following reasons:

1. Clerk Crowley's position is a regular six day per week assignment. He is not assigned to work on Sunday and there is no relief clerk assigned on Sunday as part of a relief schedule in this position.
2. When Clerk Crowley is notified to work on Sunday it is extra work and he is paid accordingly under Rule 25(c).
3. Prior to the war, Clerk Crowley did not work on Sundays.
4. During the war, Crowley frequently worked extra on Sunday because of the expanded amount of work to be done. For all such extra Sunday work he was paid at penalty rate under Rule 25(c).
5. The position was not changed from a six day to seven day position and Carrier did not include this position in a regular relief schedule of seven day positions under Rule 30.
6. Yard Clerk Crowley was **not** and could **not**, under the Agreement Rules be **assigned to work seven days**.
7. This claim is an attempt on the part of the Employees to have this Board establish a seven day position in place of an already established six day position where there is no necessity therefor.

OPINION OF BOARD: Claimant is regularly assigned to a six-day position, Monday through Saturday, of Assistant Chief Clerk at the Croxton Yard Office, Croxton, N. J. He performs miscellaneous yard clerical work. Prior to the war he was not called to do extra work on Sundays. When the work increased during the war he worked on Sundays and earned the overtime rate under Rule 30 for Sunday work. After the war the work slackened and he was not called for Sunday work. On May 5, 1946 and on subsequent Sundays all the clerical work at the Yard Office was performed by Clerks regularly employed on Sundays. The work of the office was considerably lighter on Sundays.

Claimant relies chiefly on Rule 20 (e) as follows:

"(e) Regularly assigned employees will be given preference when overtime is necessary on their positions. Other qualified employees may be used to assist in such overtime, provided they are not worked in lieu of the regular employees."

However, Carrier asserts that the clerical work required to be done at this yard cannot be specifically assigned to the same yard clerk each day. The work varies according to the day's business. A number of factors, such as the time of the arrival and departure of trains, increase and decrease in business, elimination of yard engines, and special yard checks, causes daily fluctuation in the duties necessary to be performed.

From the facts before us we cannot definitely determine that the work performed on Sundays by the Clerks regularly employed on Sundays constitutes overtime work that is necessary on Claimant's position, as prescribed by Rule 20 (e). Consequently, the requirements of that rule have not been met, and it does not support the claim on the facts before us.

Furthermore, to sustain the claim under the particular circumstances we find here would have the effect of transforming a regular six-day position into a seven-day position. This we may not do; it is beyond our jurisdiction.

Accordingly, the claim must be denied.

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; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 6th day of August, 1948.