

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORPORATION**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violates the current Clerks' Agreement by assigning work regularly performed on week days by the occupant of a position classified as "not necessary to the continuous operation of the Carrier" to the occupant of a position classified as "necessary to the continuous operation of the Carrier" on Sundays and holidays, and that

(a) Yard Clerk Harry S. Beal, Jr. and/or all subsequent occupants of the position in question shall now be allowed a days pay at punitive rate for this violation on Sunday, November 9, 1947 and all subsequent Sundays, and that

(b) Yard Clerk Harry S. Beal, Jr. and/or all subsequent occupants of the position in question shall now be allowed a days pay at punitive rate for this violation on Thanksgiving Day, November 26, 1947 and all subsequent holidays.

EMPLOYEES' STATEMENT OF FACTS: Mr. Harry S. Beal, Jr., holds a regularly assigned position designated as Yard Clerk at North Albany Yard 3:00 P.M. to 11:00 P.M.

The principle duties and responsibilities of Mr. Beal's assignment consist of checking and marking cars the preponderance of which work is performed out-of-doors and requires the occupant of the position be clothed for protection against the weather. For many years prior to the time Mr. Beal, Jr. was assigned to the position in question the position was classified as necessary to the continuous operation of the Carrier and was assigned on a seven (7) day per week basis to an employee who was paid at pro rata rate for all service rendered. When the position was vacated by the seven (7) day assigned employee it was advertised by the Carrier as a six (6) day per week assignment and assigned to Clerk, Harry S. Beal, Jr. effective November 8, 1947 on a six (6) day per week basis.

On Sunday, November 9, 1947, Clerk Beal's regularly assigned day of rest and all subsequent Sundays, the work of checking and marking cars regularly performed by Clerk Beal was assigned to Yard Clerk Edward Dillon. The same was true on Thanksgiving Day, November 26, 1947 and all subsequent holidays.

Yard Clerk Edward Dillon for many years has been assigned to a position designated as Yard Clerk—North Albany Yard 3:00 P.M. to 11:00 A.M. daily. The duties and responsibilities of Clerk Dillon's assignment consist

It is the position of the employees that the Carrier's action was in violation of the above quoted Rules and was an attempt by the Carrier to escape payment of overtime to the incumbent of the position in question. Furthermore, it was decided by Award No. 336 of the National Railroad Adjustment Board, Third Division, that a six day position and a seven day position belong in different classes. Such was also the holding in Award No. 2282 of the Third Division on the question of preference in performing the extra time work of a six day position.

CARRIER'S STATEMENT OF FACTS: Harry A. Beale, Jr. owned a position as Yard Clerk in North Albany N. Y. Yard with hours of service from 3 P.M. to 11 P.M., with Sunday as the designated day of rest.

POSITION OF CARRIER: The duties of a yard clerk are dependent upon various circumstances that may change from day to day. It cannot be held that on a tour of duty where more than one yard clerk is employed than any one yard clerk performs any specific duties that could not be expected or required of any other yard clerk working. The Yard Master or Chief Clerk directs the work to be performed. The addition to or elimination of yard switch engines and variance in arrival and departure of road freight trains all tend to make the duties of a yard clerk flexible.

On the Sundays and holidays made subject of this claim, there was insufficient work for two yard clerks and all of the duties were performed by the other yard clerk who owned a seven (7) day position and who was assigned to work seven (7) days per week. It is the Carrier's contention that Rule 28(b), reading as follows:

"In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and holidays."

does not support the claim.

No overtime was worked or required on the Sundays or holidays in the claim. All of the service required was performed during regularly assigned hours. The seven-day yard clerk was regularly assigned and, therefore, could be used to perform any or all duties required of a yard clerk during the hours of his assignment, which included Sundays and holidays.

The Carrier firmly believes that support of its position can be found in Third Division Awards Nos. 4031 and 4074 and asks that inasmuch as there has been no rule violation, that claim be denied. (Exhibits not reproduced.)

OPINION OF BOARD: Briefly, the facts are that prior to November 8, 1947 there were two yard clerk positions, 3:00 to 11:00 P.M. at North Albany Yard, and both were seven-day per week positions. Effective November 8, 1948 one of the positions was made a six-day per week position, it was so bulletined and bid in by Harry S. Beal, Jr., the Claimant here. Edward Dillon occupied the other position which was continued as a seven-day position.

The Employees claim that the type of work performed on the six-day position was outside work, checking and marking cars in the yard, that it was distinctive to the position and could not be assigned to or performed on Sunday by Dillon, whose duties on other days ordinarily were performed inside the yard office. There is no claim that the change of the seven-day position to a six-day position was in violation of the Agreement. The only claim here is for violation of the Agreement by reason of the seven-day clerk doing work of the type ordinarily performed by Claimant, instead of calling Claimant to perform such type work on Sunday. There is no record to indicate how much of such work is performed on Sunday.

In the instant case both Claimant and Dillon were yard clerks, working under the same Agreement, performing the same class of work, and both are qualified to do both inside and outside work. When the positions were

both seven-day positions, the record shows it was the practice for Claimant and Dillon to work alternate Sundays alone, when the man working performed all the work of both positions. The Carrier shows that on occasion Clerk Dillon performs work outside such as checking cars, on days other than Sunday, while Claimant is working.

The Carrier in its submission cited Awards 4031 and 4074 which are in point with the issue here, and in the former award it was held, "From the facts before us we cannot definitely determine that the work performed on Sundays by the Clerks regularly employed on Sundays constitutes over-time 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." We concur with the reasoning of these awards, and hold that the work performed on Sunday by Clerk Dillon was assigned to him in accordance with the Agreement.

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 Employee 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.