

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

HARBOR BELT LINE RAILROAD

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

(a) Carrier violated Agreement Rules when, during week preceding July 27, 1947, it abolished position of Relief Clerk, No. 326, which relieved Car Clerk position No. 1576 on Fridays, and coincident therewith changed rest day of Car Clerk Position No. 1576, which was a position necessary to the continuous operation of the Carrier, from Friday to Sunday, and on Sundays during period July 27, 1947 to August 28, 1949, inclusive, blanked Car Clerk Position No. 1576 by the part time assignment of the duties to the incumbent of Job 1547, Auto Yard Clerk, which was not a regularly assigned Relief Clerk Position.

(b) The incumbent of Car Clerk Position No. 1576, J. M. King, shall now be compensated eight hours at time and one-half the pro rata rate of Car Clerk Position No. 1576 for each Sunday during period July 27, 1947 to August 28, 1949, inclusive, that he was not permitted to work Car Clerk Position No. 1576.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 27, 1947, Job No. 1576 was assigned hours from 3:45 P. M. to 11:45 P. M. daily, seven days per week, with Friday as the regularly assigned rest day of the incumbent. This position was relieved on Fridays by the incumbent of Relief Job No. 326. (See General Manager's Clerks Bulletin No. 279 dated October 6, 1945, Employees' Exhibit "A".) Hours of assignment of Job 1576 remained the same until September 22, 1948, when they were changed to 4:45 P. M. to 1:45 A. M., with one hour for lunch. (See Employees' Exhibit "F".) The duties of Car Clerk Position No. 1576 were confined to the Harbor Belt Line Railroad East San Pedro Yard and consisted of taking car orders, writing train consists, answering telephones, making yard checks and other general Car Clerk work.

During the week preceding July 27, 1947, the Carrier, by re-arrangement of job schedules, abolished the position of Relief Clerk, No. 326, which had theretofore relieved Car Clerk Position No. 1576 on Fridays, and coincident therewith changed the rest day of Car Clerk Position No. 1576 from Friday to Sunday. The duties of Car Clerk Position No. 1576 remained unchanged. (See Superintendent's Clerks Notice No. 7.21, dated July 21, 1947, Employees' Exhibit "B".)

The Carrier also contends:

(b) That the period of time for which claim is made is improper and should be August 3, 1947 to December 5, 1948, both dates inclusive. Carrier's Statement of Facts substantiates this position. As outlined in Carrier's Statement of Facts, the erroneous dates have been called to the attention of the employe representatives.

SUMMARY

(1) Position 1576 was a seven-day position necessary to the continuous operation of the Carrier prior to July 22, 1947, relief on the regularly assigned relief day being provided by relief clerk assignment 326.

(2) On July 22, 1947, position 1576 was changed from a seven-day position to a six-day position by proper bulletin (Carrier's Exhibit No. 1).

(3) No protest or question has ever been raised by the Employees concerning this bulletin and Employees have recognized that position 1576 was, in fact, changed from a seven-day position to a six-day position (Carrier's Exhibit No. 2).

(4) There were no duties performed on Sundays subsequent to July 22, 1947 which had theretofore been performed on Sundays by position 1576. The only duties performed on Sundays by assignment 1547 was the matter of checking the yard which is properly Yard Clerk work and not Car Clerk work, and the matter of preparing post card notices to consignees which would have been performed by assignment 308 had that position remained in effect on Sundays, and not by assignment 1576.

(5) All services rendered on Sundays by assignment 1547 were rendered at hours outside the previously assigned hours of assignment 1576 were rendered at hours outside the previously assigned hours of assignment 1576 except a possible overlap of less than one hour during which incumbent on assignment 1547 was performing work not theretofore performed by assignment 1576.

(6) There was no need for clerical help on Sunday at East San Pedro except that performed by assignment 1547.

(7) There was no violation of the collective agreement as evidenced by analysis of rules in Position of Carrier.

(8) The Employees' Statement of Claim is in error for the reasons that:

- (a) The basis of compensation is not supported by awards of the National Railroad Adjustment Board or the applicable agreement rules; and,
- (b) The period of time for which claim is made is in error as evidenced by Carrier's Statement of Facts.

CONCLUSIONS

In view of the evidence, the Board is respectfully requested to deny the claim of the Employees in full.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood makes this claim on behalf of J. M. King as the incumbent of Car Clerk Position No. 1576. It asks that he be compensated for eight hours at time and one-half his regular rate as Car Clerk for each Sunday during the period from July 27, 1947 to August 28, 1949. The basis for the claim is that he

was not permitted to work his position on those Sundays, Carrier having the duties of his position on those days performed by the incumbent of Job 1547, Auto Yard Clerk.

Claim is not made beyond September 1, 1949 because, with the changes made by the 40 hour week being put into effect, the conditions out of which this claim arose no longer existed.

As to Carrier's contention that the claim should be disallowed because filed too long after it arose we find no merit. No provision of the parties' effective Agreement is cited which limits the time within which claims must or can be made nor does the record disclose any conduct on the part of claimant giving cause for the application of either the doctrine of estoppel or laches. See Awards 4039, 4454.

That a position necessary to the continuous operation of the Carrier, referred to as a seven-day position, cannot be blanked in whole or in part has been fully established by the Awards of this Division. See Awards 3661, 3745, 3891 and 4550.

The phrase "necessary to the continuous operation of the Carrier" has become accepted to mean as applying to work necessary to keep the trains running and the railroad in physical operation. See Award 3054 of this Division.

In the absence of any rule prohibiting it from doing so Carrier has the right to change a seven-day position to a six-day position if the facts so justify. See Awards 3793 and 4600 of this Division. No rule so prohibiting has been cited.

Considering the decline of business, particularly the fact that only one train consist was handled at East San Pedro on each Sunday being a Union Pacific train arriving there between 5:00 and 7:00 A. M., we think the Carrier was fully justified in changing the position of Car Clerk, Job 1576, from a seven-day to a six-day position and that it actually did so effective July 22, 1947.

After July 22, 1947, Carrier required the incumbent of Job 1547, Auto Yard Clerk performing general messenger service, to report to the East San Pedro Yard every Sunday at 2:00 P. M. for the purpose of performing whatever service was there to be performed, including that in connection with the Union Pacific train that had arrived earlier in the day, and directed him to stay there as long as necessary to complete the work. The regular starting time of Job 1547 was 2:00 P. M. Such use of the incumbent of Job 1547 was in violation of Rule 21 of the parties' effective Agreement. See Awards 2695, 4532, 4499 and 4692 of this Division.

In performing these duties, part of which were of the kind and nature performed by the incumbent of Job 1576 during the six days of his regular assignment, the incumbent of Job 1547 worked during the assigned hours of Job 1576 which, before September 22, 1948, began at 3:45 P. M. and after that date at 4:45 P. M. The duration of such work, however, was never in excess of the maximum time fixed for a "Call", as provided for by Rule 19 (a) of the parties' effective Agreement.

While it may be true that if the incumbent of Job 308, Car Clerk, had been on duty on Sundays he would have performed the work here complained of as having been performed by the incumbent of Job 1547, that does not justify the Carrier's use of the incumbent of Job 1547 for that purpose during the hours of his regular assignment. If work of the kind and character performed by the incumbent of Job 1576 on six days of the week was required to be performed on Sundays during the hours of his regular assignment Carrier should have called the incumbent thereof to perform it and not the incumbent of Job 1547.

The claim as made covers the period from July 27, 1947 to August 28, 1949. It is made on behalf of J. M. King as the incumbent of Job 1576. The record shows King held this position as Car Clerk from July 30, 1947 to December 5, 1948. It could have been made for whoever was incumbent of Job 1576 but such is not the form of the claim made. It is not our prerogative to amend the claim beyond that actually made and presented on the property. Consequently, the claim is limited to the period that King was incumbent of the position of Job 1576 as Car Clerk.

We find the claim in behalf of J. M. King should be allowed for a "Call" on every Sunday between July 30, 1947 and December 5, 1948.

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 violated the Agreement.

AWARD

Claim sustained in behalf of J. M. King for a "Call" on every Sunday between July 30, 1947 and December 5, 1948, but otherwise dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 20th day of February, 1951.