

Award No. 6023

Docket No. CL-6013

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, amended September 1, 1949, particularly Rules 4-A-1(i), 4-C-1 and 5-E-1(e), Freight Station, Mansfield, Ohio, Eastern Division, by failing to properly fill or provide relief for rest day of six-day position of clerk, Symbol Number F-180.

(b) C. W. Wolf, incumbent, be paid a day's pay at time and one-half for Saturday, September 10, 1949, and all subsequent Saturdays until adjusted. (Docket C-547)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees in which the Claimant in this case held a position, and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, amended September 1, 1949, covering Clerical, Other Office, Station and Storehouse Employees, between the Carrier and the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Title I, Section 5, Third (e), of the Railway Labor Act and which has also been filed with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in this case is an employee, the incumbent of regular clerical position, Symbol No. F-180, Freight Station, Mansfield, Ohio, Eastern Division. The tour of duty is from 11:00 A. M. to 8:00 P. M., one hour meal period, rest days Saturdays and Sundays. Included in the duties of his position are rating and billing carload freight. On Sundays this freight station is closed. On Saturdays, one of the assigned rest days of this position, no relief employee, regular or extra fills this position. On Saturdays, the ticket

reasoning contained in Award 3193, supports this holding and is reaffirmed. See Awards 2695, 3049, 3222, 3251, 3271, 4196. Awards by other referees to the same effect are: 2346 (Burque), 2823 (Shake), 3859 (Youngdahl), 3232 (Thaxter), 3371, 3375, 3376 (Tipton), 3504, 3505 (Douglas), 3609 (Rudolph), 3745, 3770, 3837 (Wenkle), 3876, 3910 (Yeager), 3890 (Swaim), and 4037 (Parker)."

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and To Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement, and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced).

OPINION OF BOARD: The parties progressed this dispute to the Carrier's General Manager, the Chief Operating Officer designated to finally pass thereon, by means of a joint statement of agreed upon facts which reads:

"Claimant is regularly assigned to Clerk's Position Symbol F-180, Mansfield Freight Station, tour of duty 11:00 A.M. to 8:00 P.M., one hour for lunch period, Saturday and Sunday assigned Relief days, five day assignment.

"On Saturdays the Second Trick Ticket Clerk accepts bills of lading for carloads from certain shippers in district and to avoid delay to cars makes out a card waybill or memo waybill, giving it to the yard for movement of car or cars to their destination.

"When the claimant returns to duty on Monday he prepares the Revenue Waybill and it is forwarded to the destination to meet up with the car. The Second Trick Ticket Clerk is not rating or billing the shipment. Claim was made and handled in accordance with Rule 7-B-1."

So far as it goes the foregoing factual statement must be accepted as true. However, the mere reading thereof makes it obvious other facts, not agreed to, were involved on the property and must be given consideration in deciding the claim which is based upon the premise the Carrier's action in assigning and requiring a regularly assigned Ticket Clerk to perform certain work on Saturdays instead of filling or providing relief for Claimant's position on that day has resulted in a violation of the Current Agreement.

The parties have failed to clearly and succinctly set forth the facts on which the claim depends with the result we have been obliged to search the record, correlate what is to be found there and draw our own conclusions therefrom. For that reason, aside from those already referred to, our relation of the applicable and decisive facts will be based upon our version of what the record discloses.

Prior to September 1, 1949, Claimant was the occupant of a Rate and Billing Clerk position at Carrier's Mansfield, Ohio, Freight Station, Monday through Saturday, with Sunday as a rest day. At the same point Carrier maintained a seven day Ticket Clerk position. The occupants of both positions were covered by the same agreement and working in the same seniority group and district.

With the establishment of the 40-Hour Week, effective as of the date last above mentioned, C. W. Wolf, the Claimant and former occupant of the Rate and Billing Clerk position, was assigned to Clerical Position, Symbol F-180 (Rate and Billing Clerk) at Mansfield Freight Station, with tour of duty 11 A. M. to 8 P. M., Monday to Friday, inclusive, with rest days Saturday and Sunday. His assignment, among other things, included the receipt of bills of lading from shipper and the preparation of car waybills and revenue freight waybills incident to the handling of freight out of Mansfield. Prior to September 1, 1949, he had been assigned similar duties on Saturday. As of the same date the occupant of the second Trick Ticket Clerk position at the Mansfield Passenger Station, which position was filled 7 days a week from 3 P. M. to 11 P. M. was assigned work formerly performed on that position, namely, the selling of tickets and making ticket reports and the work of accepting bills of lading, preparing car waybills and memo waybills for shipments offered from Monday to Friday after 5:30 P. M. In addition, effective with the placing of the 40-hour Week in force and effect, the Carrier required and assigned to the occupant of the Ticket Clerk position the work last above described on Saturdays after 3 P. M. This same work, i. e., accepting bills of lading, preparing card waybills and memo waybills for shipments offered on Saturday, had been assigned to and performed by the Ticket Clerk on Saturdays after 5:30 P. M. prior to September 1, 1949. The Ticket Clerk performs no rating or billing in connection with such work but on Saturdays he does give the bills of lading he has accepted and the card or memo waybills he has made out on that date to the yard office to expedite the moving of freight cars. Thereafter, the rate and billing clerk, now assigned Monday through Friday, is required to prepare the revenue waybills for the shipments in question on Monday and forward them to destination to meet up with the cars.

The record discloses that in taking the foregoing action the Carrier assigned the work above described to the ticket clerk with the intention of making the involved position of rate and billing clerk a five day position, that in connection therewith it established for the employee occupying the rate and billing clerk position prior to the advent of the 40-Hour Week a work week of 40-Hours, consisting of five days of eight hours each with two proper rest days, all that was required under existing provisions of the 40-Hour Week Agreement, and that it has maintained the position as a five day position ever since.

Under the foregoing conditions and circumstances and others to be found in the record of the instant case we are convinced that as of the

date the 40-Hour Week Agreement was placed in force and effect Carrier had the right to establish the involved position of Rate and Billing Clerk as a five day position. With that right, since the existing facts clearly show the Saturday work in question was clerical work of such nature it could properly be assigned to and performed by any clerk within the same seniority group and district, it had the right to assign such work to the involved Ticket Clerk position. Having been so assigned there was no longer any work to be performed on the Rate and Billing Clerk position on Saturday. The result is that Carrier's action was not in violation of the rules of the Agreement on which the Claimant relies in support of his claim. Rule 4-A-1 (i) has no application because it is conditioned on work being on a day which is not a part of any assignment. Here the work had been assigned to the Ticket Clerk; Rule 5-E-1(e) is not applicable for the reason it has reference to the establishment of relief assignments to do the work necessary on rest days, of assignments in six and seven days service or combinations thereof, not here involved; and Rule 4-C-1 has no application to a situation where—as here—the work performed by an employee is work which has been properly assigned to his position.

For a decision factually different but nevertheless supporting and sustaining our conclusion that under the confronting facts and circumstances the Carrier's action did not violate the Agreement. See Award 5250.

In conclusion it should be stated we have read and given consideration to all of the numerous awards relied on by Claimant in support of the claim but have decided that it would merely encumber this opinion to no useful purpose to analyze and distinguish them. It suffices to say that when carefully examined it appears such awards deal with factual situations so different from the one here involved that they are clearly distinguishable and hence are of no value as precedents when applied to the controlling facts of this case.

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 facts of record do not establish a violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 26th day of November, 1952.