

Award No. 6216
Docket No. CL-6338

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**

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(1) That Carrier violated rules of the Clerks' Agreement commencing with application of the Forty Hour Week Rules, effective September 1, 1949, and continued to violate the forty hour agreement when it failed to properly apply the provisions of said Forty Hour Week Rules in conjunction with rules of the General Agreement in affording required relief service on Bill Clerk position at Mason City, Iowa.

(2) That the involved employee, J. L. Downing—Bill Clerk at Mason City, Iowa, be allowed an additional day's pay at the rate of time and one-half as wage loss for each Saturday from September 1, 1949, and for all subsequent Saturdays of each succeeding week the position was filled by employees outside the scope of our General Agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, J. L. Downing—Bill Clerk at Mason City, Iowa, was assigned from 9:00 A. M. to 6:00 P. M. with rest day of Sunday.

Effective September 1, 1949, with application of the Forty Hour Week Rules established by agreement between the Carriers represented by the Eastern, Western and Southeastern Carrier's Conference Committees and the Employees represented by the Railway Labor Organizations, signed at Chicago on March 19, 1949, Carrier rearranged the hours of service requirements of the claimant designated, J. L. Downing to work from 9:00 A. M. to 6:00 P. M., with Saturday and Sunday of each week as his designated rest days.

Main duties of Bill Clerk Downing are as follows:

Makes switching settlement statements.

Handles car tracers.

Handles waybill corrections.

The telegraphers, the bill clerk, the cashier and the agent all perform clerical duties of various kinds during their tours of duty, no clerical work being assigned exclusively to any employe to the extent that some of the other employes do not at times perform the work. That is true especially on employes' rest days when some of their work necessarily must be done by the employes regularly assigned to work on those days.

All employes, including the agent, have performed work as above outlined for many years without complaint or protest by the Clerks' Organization.

Effective September 1, 1949, when the five-day work week was put into effect, the freight house was closed on Saturdays, no freight being received or delivered on that day. That obviously reduced the work on Saturdays. Considerable of the work performed by Clerk Downing during the week, Monday to Friday, did not exist on Saturdays and no clerk was needed in relief of Downing on that day.

There was some carload freight to bill on Saturdays, but the amount of that billing could not be anticipated. Such billing as did show up was taken care of either by the telegrapher on duty, in line with the practice that has prevailed for many, many years, or by the Agent.

Carrier believes that, in view of that practice, which prior to September 1, 1949 was not complained of or protested by the Clerks, there was no violation of the Clerks' Agreement when on Saturdays the Agent performed some of the billing of carload freight that was to move that day.

As to the telegrapher performing some of the work on Saturdays:

Telegraphers at Mason City have always performed clerical work of all kinds, including some of the billing of LCL and CL freight.

For instance, the Armour Packing Company submits billing on perishable carlots of freight late in the afternoons almost daily, too late to be billed by the bill clerk and which, therefore, needs to be and is billed by the second trick telegrapher.

Clerical duties are as much a part of the telegraphers' duties at Mason City as they are of the clerks at that place. Obviously some of the work usually performed by the bill clerk on his work days must be performed by the telegrapher or one of the other employes on duty on Saturday, one of the bill clerk's rest days.

Effective September 1, 1949, when the five-day work week was put into effect, there was not, insofar as could be determined by the Carrier, sufficient work on Saturdays to necessitate the assignment of a relief clerk on that day, nor for a call assignment for the regularly assigned employe. A considerable portion of the Bill Clerk's usual work could be and was carried forward into his following work day. However, if any of his duties needed to be done on his rest day, it was done by the employes working on that day.

In view of the circumstances as herein outlined. Carrier believes the instant claim to be without merit.

All data in support of Carrier's Position has been presented to the representatives of the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of the following factual situation. Prior to September 1, 1949 the Bill Clerk position at Mason City, Iowa, was assigned a work week of Monday to Saturday with Sunday off. It was a six day position. Effective as of that date, and in accordance with

the provisions of the 40 Hour Week Agreement which the parties had adopted, this position was assigned a work week of Monday to Friday with Saturday and Sunday as rest days. The duties of the position, which were regularly assigned to and performed by the occupant thereof from Monday to Friday, were, on Saturdays on and after September 1, 1949, performed, up until March 22, 1952, by the Agent and thereafter by a telegrapher, except as they could be carried over until Monday and then performed by the regular occupant of the Bill Clerk position, claimant J. L. Downing. The duties performed on Saturdays by either the Agent or Telegrapher were substantial and, in fact, it is evident that Carrier needed to have these services performed from Monday to Saturday, inclusive. It remained six day services. Neither the agent nor the telegrapher is covered by the Clerks' Agreement.

There was also a Cashier position at Mason City which, prior to September 1, 1949, had been a six day position, Monday to Saturday with Sunday off. Effective as of September 1, 1949 it was assigned on a 5 day basis, Tuesday to Saturday with Sunday and Monday as rest days. The duties of this position on Monday, on and after September 1, 1949, which could not be carried over until Tuesday were performed by the Agent. This situation continued until April 14, 1952 when the position was assigned a work week of Monday to Friday with Saturday and Sunday as rest days. Thereafter the work of both positions that was performed on Saturdays was performed by Telegraphers. The positions of Bill Clerk and Cashier are both under the provisions of the Clerks' Agreement and of the same class.

Carrier calls our attention to the fact that under the provisions of the 40 Hour Week Agreement the assignment of relief employees is not a condition precedent to the establishment of six day positions and that relief assignments are only required to be made when there is work to be performed. That is, when all the work can be efficiently performed by staggering the work weeks of regularly assigned employees the necessity of a relief assignment on rest days does not exist. See Awards 5545, 5555, 5912, 6075 and 6184 of this Division. In other words Carrier may, in accordance with its optional requirements, stagger the work week assignments of employees regularly assigned to six day service so the rest days of some will coincide with the work days of others and thus make it possible for the regular employee to do all the work necessary to have performed on those days without the necessity of any relief. But in making such arrangement it should be understood that such employees must be of the same class. See Awards 5590, 5912 and 6184 of this Division.

While the positions of Bill Clerk and Cashier, both being of the same class, were staggered during the period from September 1, 1949 to April 14, 1952, the difficulty with Carrier's position is it did not have them each do the work of the other position on the rest day thereof. In other words, the regular employees of the same class did not perform the work. In fact, it was performed by employees not covered by the Clerks' Agreement. We find this principle has no application to the factual situation here.

Prior to the 40 Hour Week Agreement, under circumstances such as here where clerical work has been regularly assigned to a clerical position during the work week thereof, that same work could not be assigned to employees not under the Clerks' Agreement on the assigned rest days of the clerical positions. See Awards 2052, 2706, 3360, 3425, 3491, 3858, 4059, 4477, 4815, 4832, 4866 and 5880 of this Division. Since the 40 Hour Week Agreement this Division has often held, and properly so, that it did not change the application of this principle. See its Awards 5117, 5195, 5254, 5879, 5580, 5622, 5623, 5925, 6019 and 6115.

As stated in Award 5622 "That principle was not changed or abrogated by the 40 Hour Week Agreement." The Agent or Telegrapher had no right to perform on rest days the work that the Bill Clerk regularly performed on the assigned days of his regular work week.

Rule 34½ (e) of the parties' effective agreement provides:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

Under this rule, no regular relief having been assigned thereto, this work on Saturdays first belonged to available extra or unassigned employees who did not otherwise have 40 hours of work that week and, if none are available, then to the regular employee. The latter is the situation here but it should be on a pro rata and not on an overtime basis since the regular employee did not do the work. See Awards 5579, 5117, 5195, 5240 and 6019 of this Division.

It should be understood that this award does not prohibit Carrier from properly staggering its regularly assigned employees at Mason City, who are assigned to and engaged in performing this same class of work, and having them perform it on one of their regularly assigned days if it is possible to do so.

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 Carrier violated the Agreement.

AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1953.