

Award No. 6694

Docket No. CL-6539

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Leiserson, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that the Carrier violated the Clerks' Agreement at Muskogee, Oklahoma beginning September 1, 1949:

(a) When it assigned and required Cashier-Clerk J. S. Bynum at Muskogee Station to work each Saturday on a call basis, and

(b) That Carrier shall now compensate Employee J. S. Bynum for eight hours at time and one-half rate for each Saturday worked September 1, 1949 to October 29, 1949 inclusive, less amounts previously paid for service on such days.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949 (effective date of the 40-hour week) the position of Cashier-Clerk at Muskogee Station worked six days per week, except holidays, Sunday rest day. The assigned hours of this position were 8:00 A. M. to 5:00 P. M. with meal period of 12:00 Noon to 1:00 P. M. Part of the assigned duties of the Cashier-Clerk is the selling of tickets for Train No. 9 departing from Muskogee 9:20 A. M. daily except Sunday.

On August 20, 1949 General Agent G. M. Wright issued Bulletin designating assigned rest days of clerical and warehouse forces at Muskogee Station effective September 1, 1949 (effective date of 40-hour week). The assigned rest days of the Cashier-Clerk, Mr. J. S. Bynum, were changed by this Bulletin from Sunday only to Saturday and Sunday, however, an asterisk was placed next to Saturday and in the last paragraph of the Bulletin Cashier-Clerk J. S. Bynum was assigned to work 8:30 A. M. to 10:30 A. M. on Saturdays.

Cashier-Clerk J. S. Bynum worked each Saturday from September 1, 1949 to October 29, 1949 inclusive, 8:30 A. M. to 10:30 A. M. and was paid for two hours at the rate of time and one-half for each of these Saturdays.

POSITION OF EMPLOYEES: The material facts in this case are not in dispute and involve the action of the Carrier in assigning an employee by Bulletin to work on a call basis each Saturday.

to such day in which case they will be paid a minimum of eight (8) hours at the rate of time and one-half. Regular assigned rest days shall not be changed without at least forty-eight (48) hours advance notice to the employes affected." (Memorandum of Agreement, dated July 27, 1949, effective September 1, 1949.)

Rule 38 reads:

"Employes notified or called to perform work not continuous with, before or after the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours time and one-half will be allowed on the minute basis."

POSITION OF CARRIER: This claim was first presented by the General Chairman of the Clerks' organization under date of September 27, 1949, copy of his letter attached as Exhibit A. Under date of October 4, 1949, we addressed the General Chairman regarding the matter, copy of our letter attached as Exhibit B.

Under date of October 12, 1949, the General Chairman requested a conference to discuss the matter. Conference was held on October 25, 1949, and at that time the General Chairman alleged the assignment from 8:30 A. M. to 10:30 A. M. on Saturday and the payment therefor on a call basis was a violation of the 40-Hour Work Week agreement. We advised him the assignment was proper and that the basis of compensation was also proper and in accordance with Rule 37(e) of the agreement.

As previously stated, the cashier-clerk was compensated on the basis of one call or two hours at the punitive rate for the service performed on Saturday. This payment made in accordance with the provisions of Rules 37(e) and 38 of the agreement.

Article II, Section 3(c) of the 40-Hour Work Week agreement reads:

"Existing provisions relating to calls shall remain unchanged."

In view of the circumstances and the application of the existing rule 37(e), the payment on a call basis for service rendered on Saturday was proper and the basis of claim for eight hours at time and one-half rate or an additional payment of six hours at time and one-half rate is not supported by any schedule rule, in fact, the claim as made in this case has the effect of requesting a new rule and is outside and beyond the construction, interpretation and application of the existing rule.

The carrier submits that the facts and circumstances do not warrant an affirmative award and we respectfully request that your Honorable Board deny the claim.

All data submitted herewith in support of the carrier's position has been presented to the employes or their duly authorized representative and is hereby made a part of the matter in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Employes charge that the Carrier violated Rules 9 (a), 21 (a), 32; and 32½ (a) of the Clerks' Agreement when on the effective date of the 40-Hour Work Week, is assigned and required the Cashier-Clerk at Muskogee, Oklahoma, to work each Saturday on a call basis. The claim is that the Cashier-Clerk should be compensated for eight hours at the overtime rate for each Saturday that he worked, between September 1 and October 29, 1949, minus the amount he was paid.

The essential facts in the case are not disputed. Prior to September, 1949, the Claimant's assigned rest day was Sunday, and he worked six days a week, Monday through Saturday. When the five-day work-week became effective, he was notified that Saturday and Sunday would be his rest day, but that on each Saturday he would be called to sell tickets for a train departing at 9:20 A. M. He did this work daily on his regular assignment, the train being scheduled to run daily. The starting time of his five-day assignment was 8 A. M., and he worked until 5 P. M. with an hour out for lunch, and his Saturday calls for service were from 8:30 A. M. to 10:30 A. M. After October 29, the station at Muskogee was closed on Saturdays, and the calls for this day ceased.

On these facts the employees contend that the work of Claimant's assignment was needed six days or 42 hours each week. They argue further there is no provision in the Agreement for less than 8 hours' work on any regularly assigned work day, and that the Carrier by requiring Claimant to work each Saturday failed to assign him two rest days as the Agreement requires. They point out also that the starting time on Saturday was different from the other five days, and that the 40-Hour Agreement provides that reduction of assignments from six to five days were not to be considered new jobs under the bulletin rules.

The Carrier's position is that it posted the required notice reducing the bulletined assignments of the four employees at Muskogee to a five-day basis, and all of them were assigned rest days on Saturdays and Sundays. An asterisk (*) opposite Claimant's name referred to a footnote indicating the two hours on Saturday. It contends that in this way it made plain that the assignment was for five work days and two rest days, but the Claimant would have the recurring call on Saturdays at the overtime rate. It relies on Article II, Section 3 (c) of the 40-Hour Agreement to justify its position, which reads: "Existing provisions relating to calls shall remain unchanged"; and also on Rule 37 (e) which provides that "Service rendered by employees on assigned rest days shall be paid for as provided in Rule 39," the Call Rule.

An examination of the rules on which the claim is based shows that they do not support the charge that the Carrier violated them. Rule 9 (a) provides for bulletining of "all new positions and vacancies," and the Employees themselves properly contend here, that in changing from a six to a five-day work-week, the assignment here involved cannot be considered a new job under the bulletin rules. Nor was there a vacancy in the assignment.

Rule 21 (a) prescribes a fixed starting time for regular assignments, which may not be changed without 36 hours' notice. The Claimant's five-day assignment has a fixed starting time, which indicates that the two hours on Saturday are not part of the regular assignment, as the notice did by the asterisk. Rule 32 is the basic day rule prescribing (with certain exceptions) that eight hours shall constitute a day's work, and Rule 32½ (a) requires the Carrier to establish a work week of five 8-hour days with two consecutive days off in each seven. This the Carrier has done. Only by assuming that Claimant's assignment was for a 42-hour week can these provisions have any bearing on the dispute here. But this assumption of the Employees begs the question, which is clearly stated in the claim where it is alleged only that "to work each Saturday on a call basis" is a violation of the Agreement.

On this issue of the Saturday call, the Employees do not claim that there was more than two hours' work to be done on that day. Since there was only the one train to be serviced it is doubtful whether there was as much as two hours' work on the Saturdays for which claim is made, and the Claimant received the minimum allowance prescribed by the Call Rule, namely, 3 hours' pay for two hours' work or less. If there had been more than two hours' work, he would have received the overtime rate on a minute basis.

The record shows plainly that the Claimant was given an assignment of five work days and two rest days. There was not enough work necessary on Saturday to require a regular relief assignment, and the Saturday work was

clearly on a day that was not part of any assignment as provided in Rule 37 (f). The asterisk (*) and the footnote on the notice posted informing the employees of their assigned rest days indicated that the Saturday work was not a part of the Claimant's five-day assignment, though this might have been made plainer if a statement had been added that this work would be handled under the Call Rule for this reason. In the absence of a qualified extra employe, the Claimant being the regular employe within the meaning of Rule 37 (f) the Carrier was required to call him for this work. Moreover the 40-Hour Agreement extended the use of the Call Rule from one rest day to two; in this case to Saturday as well as Sunday.

The Carrier did not fail to assign him two rest days because it called him as required. Saturday was his rest day, and Rule 37 (e) provides for "Service on Rest Days," prescribing also that such service shall be paid as provided in the Call Rule. The Carrier so paid him. It therefore did not violate the Agreement, and there is no merit in the claim.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of June, 1954.