

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the rules of the Clerks' Agreement when they failed to call C. L. Ross, Sr., to perform the necessary work on his position of Weighmaster on July 4, 1950, and

(2) The Carrier shall now compensate Mr. Ross for four hours at the punitive rate on the above referred to date.

JOINT STATEMENT OF FACTS: C. L. Ross, Sr., was regularly assigned as Weighmaster at New Castle Junction, Pa., rate \$11.95 per day, rest days Monday and Tuesday. In the absence of the regular relief employee he had been required to perform service on his rest days but on Monday, July 3, 1950, he was advised not to report for duty the following day, July 4, 1950, because it was a holiday. On Tuesday, July 4, 1950, Yard Clerk G. F. Sherman, rate \$12.19 per day, weighed 29 cars.

POSITION OF EMPLOYEES: C. L. Ross, Sr., is regularly assigned to position of Weighmaster, Position No. 74-1-121, at New Castle Junction, Pa., hours 8 A. M. to 4 P. M., Rate \$11.95 per day, rest days Monday and Tuesday, under the supervision of the Freight Agent. G. F. Sherman is a Yard Clerk who is regularly assigned to Yard Clerk position No. 74-1-137 which works each Tuesday. The Yard Clerk is under the supervision of Terminal Trainmaster. At 3:30 P. M., July 3, 1950, while claimant was on duty performing service on his Monday rest day, he was notified by the Freight Agent, his supervisor, that he should not report on July 4, 1950. The reason given by the Freight Agent was that he had been notified by the Terminal Trainmaster there would be no hump crew working on July 4, 1950, and therefore, there would be no work for the Weighmaster.

On July 4, 1950, however, a hump crew did work and there was plenty of work for the Weighmaster. Claimant Ross, the Weighmaster, was not called out under Rule 7(c); however, instead Yard Clerk Sherman, under the supervision of the Terminal Trainmaster and upon his instructions, was ordered to perform the work.

The Carrier asserts that neither under the rules, nor the interpretations to rules, nor under established practices on this property is there any support for this claim. The claim is without merit.

The Carrier respectfully requests this Division to hold that this claim is without merit and to deny it accordingly.

This dispute has been handled in accordance with the provisions of the Railway Labor Act, as amended. No agreement on a settlement thereof having been reached between the parties, it is hereby submitted to the National Railroad Adjustment Board for decision.

(Exhibits not reproduced.)

OPINION OF BOARD: The relief assignment covering Claimant's rest days was vacant so Rule 4 (b-2) applied to work required on his rest days. In the memorandum of conference between the Superintendent and the Division Chairman the Superintendent stated:

"Conditions developed on the 4th which made it necessary to hump some cars and weigh some cars; the weighing was done by a Yard Clerk, G. F. Sherman, and consumed 3 hours weighing 29 cars, which was doing Weighmaster position's work in this emergency".

Since the work required is admitted to be Weighmaster work, it appears that pursuant to Rule 4 (b-2) the claim must be sustained.

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 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.