

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

STATEMENT OF CLAIM: The claim of the Carrier is that the following claim, which was submitted to the Carrier by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, is without merit:

"Claim of J. T. Taylor and/or his successors, for eight hours at time and one-half rate effective Monday, April 6, 1953 and for each Monday forward account employe not covered by the Clerks' Agreement and with no seniority rights used to relieve Mr. Taylor on Monday, which is one of his assigned rest days."

CARRIER'S STATEMENT OF FACTS: On August 1, 1897, this Carrier's passenger trains started using the Union Passenger Station at Shreveport, Louisiana. All forces, including ticket sellers, were KCS employes. This Carrier had no forces handling ticket sales at Shreveport.

In November of 1929, this Carrier established a ticket office, first in the Youree Hotel and later in another nearby building, for the purpose of handling passenger business, selling railroad and Pullman tickets, furnishing information, and doing other work in connection with those activities. H. L. Morelock was made City Passenger and Ticket Agent there in 1929. He has held that position ever since, and has at all times performed every phase of work in connection with ticket sales. For a while the total force consisted of this Agent, and a Ticket Seller to assist him, and each of them performed all phases of ticket work. Later, in April of 1932, because passenger traffic decreased, the position of Ticket Seller was abolished, and thereafter these duties were performed exclusively by City Passenger and Ticket Agent Morelock.

On May 10, 1941, this Carrier ceased operating into the union station, having constructed its own station. Its passenger trains started using this new station at Shreveport, and its ticket office was moved to its new station, as of that date. Effective as of May 10, 1941, positions were established and filled for one ticket clerk on the second shift and one on the third shift, both working seven days a week. No ticket clerk position was established for the first shift, as City Passenger and Ticket Agent Morelock handled all the work on that shift without assistance, doing the same work he had been doing ever since 1929.

assuming, without deciding, that the work was of such nature does not help the Carrier's position. Here the work had been assigned to the position for many years and the position itself is still in existence. Otherwise stated, the position had not been abolished. Under such circumstances it has been held the Carrier could not assign work to a position not under the Agreement, whether the work was incidental to the position to which it was assigned or not. See Award No. 3491. Noting Carrier's criticism of the last mentioned rule we pause to note the sound and plausible reason for its pronouncement springs from the fact that to hold otherwise would permit the Carrier by careful manipulation to take work from regularly established positions with impunity."

* * * * *

It is hereby affirmed that all data herein contained in support of claimant's position has been submitted in substance to the Carrier and is made a part of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier brings this case to the Board asserting that Ticket Clerk J. T. Taylor and his successors claim they are entitled to one day's pay for each Monday beginning on April 6, 1953, that they were not used on the Monday rest day of their positions and that others not under the Agreement are alleged to have performed the work. Many incidental issues have been raised and discussed at great length by the parties which we shall discuss only if we find it necessary to do so.

The record shows that in 1929, this Carrier first established an uptown ticket office in Shreveport, Louisiana. One H. L. Morelock was designated as City Passenger and Ticket Agent, a position he has since retained. At that time Morelock had one ticket clerk to assist him. In 1932, the work of the office decreased to such an extent that the ticket clerk position was abolished. During the period, however, Morelock performed every kind of work in connection with the sale of tickets and after the ticket clerk position was abolished he performed all the work at the office, including all ticket work. In 1941, a new passenger station was occupied by the Carrier in Shreveport. The ticket office was moved into the station and two ticket clerks were assigned. Morelock worked the first trick and continued to handle the sale of tickets. The two ticket clerks worked the second and third tricks. All three were seven day positions.

In June 1942, due to an increase in business due to war activities, an additional ticket clerk was assigned to work the first trick. In July 1942 and May 22, 1943, additional ticket clerks were assigned. In May 1945 and April 1947, ticket clerk positions were abolished, reducing the force to the agent and three clerks, working around the clock. The ticket agent continued to handle ticket sales all during this period up to the effective date of the 40 Hour Week Agreement on September 1, 1949.

On the latter date, the three ticket clerks were assigned to seven day positions around the clock with six rest days. Five of the rest days were filled by a regularly assigned relief employe. The Mondays here involved were rest days not included in the regular relief assignment and are the days involved in the present dispute. Such Mondays were one of the rest days of the first trick ticket clerk assignment. The Carrier states that the work on such Mondays was light and that the ticket agent was able to do all of the ticket work on such days, and, because thereof, the tag-end rest day was not filled. The Organization contends that this constitutes a violation of the Agreement.

The ticket agent is not covered by the Clerks' Agreement. Carrier contends that as long as the ticket agent was able to do all the work on the

tag-end rest day that it was not required to fill it. The Organization's contention is that it was improperly filled by the ticket agent, an employe not covered by the Clerks' Agreement. The primary question is whether or not Carrier is required to assign a ticket clerk to perform the rest day work on Mondays on the first trick.

The record clearly shows that Morelock in his capacity as City Passenger and Ticket Agent at Shreveport has continuously since 1929 performed every kind of ticket work in connection with the sale of tickets. No complaint was made by the clerks until this claim was filed so far as the record shows. While his position is not within the Clerks' Agreement, we are compelled to say that this long established practice at Shreveport cannot be abrogated at the option of the Organization. His position appears to be that of a minor supervisory officer and the work he performs in selling tickets is a part of his position by the long continued practice acquiesced in by the Organization. It is plain to us that the ticket work at Shreveport is necessary to be performed seven days per week and that the three ticket clerks are each assigned to seven day positions. The Carrier's contention that the first trick ticket clerk was assigned a six day position is without merit. The latter was assigned rest days of Monday and Tuesday which could be incidental only to a seven day position. With the ticket agent working on the Monday rest days, and able to do all the required ticket work on those days, is the Carrier required to assign a ticket clerk on those days? We think not.

There is nothing in the 40 Hour Week Agreement which requires either or both rest days of a seven day position to be filled at all times. If there are employes working who may properly perform the rest day work in connection with their own, the Carrier may properly blank unassigned rest day work. The performance of such rest day work is governed by the operational requirements of the Carrier. This is in accordance with the literal working of Rule 30 (f), current Agreement, which states:

"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 employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe assigned that class of work." (Emphasis supplied)

In Award 7183, we determined a similar question in the following language:

"We point out in this case that it was not necessary to work the holidays and rest days of this claimant's assignment. The work on those days could and was performed by regularly assigned telegraphers entitled to perform it. If it had been necessary to use other than such regularly assigned employes to perform the work, then claimant would have been entitled to it in the absence of available extra or unassigned employes not having 40 hours of work that week. The assertion that claimant was assigned the ticket selling work exclusively on his Tuesday through Saturday assignment cannot be sustained. He was assigned to assist the telegraphers for 3½ hours per day only. It is only when such assistance is required on Sundays, Mondays and holidays that claimant could properly invoke the provisions of Rule 43 (g)."

It is urged, however, that Morelock was used to perform the Monday rest day work and, not being within the Clerks' Agreement, he could not be so used. The answer to this is: Ticket selling work at the Shreveport Office was not the exclusive work of the clerks. Morelock was entitled to perform such work by virtue of a long established practice. He was used on his own position on Mondays on the first trick, not as a rest day relief man. He was able to perform the ticket work necessary to be performed on those days. Since he could properly perform ticket work, the operational requirements of the Carrier did not require that this unassigned tag-end day be worked. Under such circumstances the Carrier is not required to fill it.

There is evidence in the record that for a period of time following the effective date of the 40 Hour Week Agreement, one Joe Brocato, regularly assigned as assistant accountant at the Freight Station, was used as a ticket clerk on these tag-end Mondays. No claim was made because of any alleged improper use of Brocato. His use has no bearing on the present dispute as the Carrier could fill the unassigned rest day or not in accordance with its operational needs.

We conclude that the position of the Organization is in error and that there was no agreement violation when claimants were not used on the Monday rest days of the first trick. Such being the case, all the other matters raised and discussed become immaterial to the controlling issue.

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 Employes involved in this dispute are respectively carrier and employes 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 28th day of November, 1955.