

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

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

The Carrier violated and continues to violate the Rules and provisions of the Clerks' Agreement, when,

On Monday, July 14, 1952, and all Mondays subsequent thereto, the Chief Clerk to the Agent at Tallahassee, Florida, suspends his work assignment at the freight station and performs, at the passenger station, the duties assigned to and performed by the Steno-Ticket Clerk from 8:30 A. M., to 12:30 P. M., Tuesday thru Saturday.

That, as a penalty for the Agreement violation, Clerk W. Y. King be paid four (4) hours at the time and one-half rate of his position, plus subsequent increases, for Monday, July 14, 1952, and the same for each and every Monday, subsequent thereto that the violation occurs, until same is corrected by assigning and including the hours 8:30 A. M., to 12:30 P. M., on Mondays to a regular relief position or performing the work at the penalty rate on Mondays.

EMPLOYEES' STATEMENT OF FACTS: At Tallahassee, Florida, the passenger station and freight station are on opposite sides of the street. The employees at the freight station perform all duties in connection with Carrier's freight operations and the station is open to the public from 8:00 A. M., to 5:00 P. M., five days a week, Monday thru Friday.

The employees at the passenger station perform all duties in connection with Carrier's passenger operations and this station is open to the public seven days a week.

In July 1952, there was among the several clerical positions at the freight station, a position styled "Chief Clerk," assigned to work Monday thru Friday, from 8:00 A. M., to 5:00 P. M., with an assigned lunch period from 1:00 P. M., to 2:00 P. M. The duties of the Chief Clerk, as shown on bulletin of advertisement, Circular No. 932 of November 27, 1950, were:

"Handling the accounts, claims and supervision of joint operations in a large agency. Qualifications—must be experienced in

weeks and rest days. Under the Mediation Agreement rest days of positions to which it applied had to be assigned and relief positions created for the purpose of fulfilling the requirement. Now Carrier may stagger the work weeks of its employees in accordance with its employees in accordance with its operational requirements and establish such relief assignments as needed to do the work necessary on rest days of assignments in six or seven day service or combination thereof.

The determination of the number of employees needed to perform its work is the function of Management except as it has limited itself by agreement. Under the rules quoted the assignment of relief employees is not a condition precedent to the establishment of seven day positions. Relief assignments are only required to be made when there is work necessary to be done. When all the work can be efficiently performed by staggering of regularly assigned employees the necessity for relief assignments on rest days does not exist. In other words Carrier may, in accordance with its operational requirements stagger the work week assignments of employees regularly assigned to seven day service so that 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. It should be understood that such employees must be of the same class and within the same seniority district.

Many rules are cited as still being in force and effect that existed prior to September 1, 1949 and it is suggested that we should now give them the same force and effect as they formerly had. That is true but these rules only come into effect after a relief assignment is created or need for relief exists. Consequently they have no application here.

Reference is also made by the Organization to the Emergency Board's Report, pursuant to which the 40 Hour Agreement of March 19, 1949 was drafted, as indicating no such change as Carrier here contends was contemplated thereby. If the rules here were ambiguous or uncertain this report might be a source of enlightenment but such is not the case. But even so, a careful reading of that report leaves the impression that the changes here made by the parties were within the contemplation of the Board's recommendations in order to perfect the economy in operations they therein referred to as partly justifying what they recommended." (Emphasis added.)

Not only in Award 6184 but also Awards 5545, 5555, 5556, 6001, 6002, 6023 based on rules of the 40-Hour Week Agreement have decided the issue presented herein in favor of the carriers. Therefore, the allegation of Petitioner in the instant case that the Carrier violated the agreement by assigning ticket and related work on Mondays between the hours of 8:30 A. M. and 12:30 P. M. to the Chief Clerk, whose position carries a higher rate than that of Steno-Ticket Clerk or Ticket Clerk-Accountant and that such work should be included in a swing relief position is devoid of merit and must necessarily be declined.

Carrier affirmatively states that all data used herein has been discussed with, made available to or is well known to Organization representatives.

(Exhibits not reproduced)

OPINION OF BOARD: The locale of this dispute is Tallahassee, Florida. Claim is made that the Respondent violated the effective agreement when it required the occupant of the position of Chief Clerk to the Agent to perform, on Mondays, between the hours of 8:30 A. M. and 12:30 P. M. the same duties and functions of the Steno-Ticket Clerk position.

Pertinent facts are not in dispute. When this dispute arose, the Respondent maintained clerical personnel at both the passenger and freight stations. Of these we are here concerned with only three positions, namely, Chief Clerk, Clerk-Accountant and Steno-Ticket Clerk. The duties of Chief Clerk were ordinarily performed at the freight station, said position having assigned hours 8:00 A. M.—5:00 P. M., Monday through Friday, with Saturday and Sunday rest days. The Clerk-Accountant position, passenger station, had assigned hours 12:30 P. M.—9:30 P. M., meal period included, Thursday through Monday, with Tuesday and Wednesday assigned rest days. The two rest days of this Clerk-Accountant were a part of a regular relief assignment. The Steno-Ticket Clerk position had assigned hours 8:30 A. M.—5:30 P. M., meal period included, Tuesday through Saturday, with off days of Sunday and Monday. From 8:30 A. M. to 12:30 P. M. the Steno-Ticket Clerk performed many of the same duties at the Clerk-Accountant position; however, between 1:30 P. M. and 5:30 P. M. the Steno-Ticket Clerk performed stenographic duties in the Trainmaster's office. At the time in question the off days of the Steno-Ticket Clerk position, that is Sunday and Monday, were not a part of a regular relief assignment, nor were they worked by an extra or furloughed employee; however on Monday, between the hours of 8:30 A. M. and 12:30 P. M. the occupant of the Clerk-Accountant position had been required to perform the same duties of the Steno-Ticket Clerk position. For this service he was compensated at the punitive rate. Effective Monday, July 14, 1952, and each Monday thereafter, the above duties were assigned to the occupant of Chief Clerk position.

It is the above assignment of these duties to the Chief Clerk that form the basis of the alleged violation. Reparations in the amount of four (4) hours pay, punitive rate, in behalf of Clerk W. Y. King, are sought for each day the alleged violation occurred and continues, or until it (work) is made (1) a part of a regular relief assignment, or (2) payment for such work is again compensated for at the punitive rate.

The following rules are cited by one or the other of the parties as being applicable here:

"NEW RULE 48½—WORK WEEKS

NOTE: The expressions 'positions' and 'work' used in this rule refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.

"(a)—General

The Company will establish, effective September 1, 1949, for all employees subject to exceptions contained in this new Rule 48½, a work week of forty (40) hours consisting of five (5) days of eight (8) hours each, with two consecutive days off in each seven (7); the work weeks may be staggered in accordance with the Company's operational requirements; so far as practicable the days off shall be Saturday and Sunday. This rule is subject to the following provisions:

"(b)—Five-day Positions

On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday.

"(c)—Six-day Positions

Where the nature of the work is such that employees will be needed six (6) days each week, the rest days will be either Saturday and Sunday, or Sunday and Monday.

"(d)—Seven-day Positions

On positions which have been filled seven (7) days per week any two (2) consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

"(e)—Regular Relief Assignments

All possible regular relief assignments with five (5) days of work and two (2) consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service, or combination thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement.

"RULE 57—SATURDAY AFTERNOON SERVICE**"(f)—Work on Unassigned Days**

Where work is required by the Company 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.

"RULE 60—

Employees will not be required to suspend work during regular hours to absorb overtime."

The Organization asserts that the work which was performed by the Chief Clerk was not work contemplated by such position inasmuch as the bulletined duties thereof did not include ticket selling and other related duties. It was contended the Mondays were not made a part of any regular relief assignment as they should have been within the meaning of Rule 48½ (c). It was pointed out that the Chief Clerk while performing these duties was required to suspend work on his own position, with the result or effect of absorbing overtime contrary to Rule 60. The Organization took the further position that since the Mondays were not made a part of a regular relief assignment, Rule 57 (f) required the work to be performed by either (1) an extra or furloughed employee, or (2) the regular occupant of the position at the punitive rate; and further that since Sunday and Monday were rest days of the Steno-Ticket Clerk position, such position was in fact a six (6) day position, the duties of which could not be assigned to or staggered with a five (5) day position.

The Respondent took the position that it was proper to assign ticket and related work to the Chief Clerk inasmuch as such duties were not a part of a relief position nor were such duties subject to performance of an extra or furloughed employee where, as here, the Chief Clerk position was under the effective agreement, was of the same class, and on the same seniority roster as other clerical employees. It was further contended that the duties in question could be assigned to the Chief Clerk and performed by him during the hours of his assignment. It was asserted that in any event the Claimant here as occupant of the Clerk-Accountant position was not entitled to perform this work on an overtime, or any other basis; and lastly, that the Chief Clerk was not required to suspend work on his own assignment for the purpose of absorbing overtime within the meaning of Rule 60.

Rule 48½ is basically concerned with the service or work necessary to be performed on designated days of a specified number within a workweek. Needless to say, a 40 hour week, consisting of five eight (8) hour days with two (2) consecutive days of each seven (7) to be designated as rest days is contemplated. While the Rule requires that every presumption be made in favor of establishing Saturday and Sunday as rest days, exceptions thereto are permissible when a carrier's operations are such that this procedure cannot be made uniform. Such exceptions are the subject of Sub-sections (c), (d) and (e) of Rule 48½ and therein provisions are made for the

creation of six (6) and seven (7) day positions as well as relief positions. The position of Chief Clerk was a five (5) day position, with Saturday and Sunday assigned rest days. The record does not disclose whether or not the Carrier's operations required the assignment of the ordinary duties of this position on the rest days thereof. The position of Clerk-Accountant had five (5) assigned days within the meaning of 48½ (d). That the duties of this position required continued performance is evidenced by the fact that the rest days thereof were made a part of a regular rest day relief position within the meaning of Rule 48½ (e). Likewise it is unquestioned that after the Steno-Ticket Clerk position was assigned five (5) work days, Tuesday through Saturday, there remained service, duties or operations which were required to be performed. This is evidenced by the assignment of this service or these duties to the occupant of the Clerk-Accountant position prior to July 14, 1942, and their performance subsequent to this date by the Chief Clerk. Since operations required that this service or these duties be performed on Monday, they were not a part of the Steno-Ticket Clerk assignment. While 48½ (e) contemplates the establishment of regular relief positions to take care of all duties or services so required, and such action is permissible, it is not required in all instances or under all circumstances.

When work, as here, is required, and while the Carrier is obligated to establish or create all possible regular relief assignments, the establishment of such regular relief assignments is not required save and except where the requirements of the operation make them not only essential but necessary.

We are of the opinion that when the duties or services here in question were not made the subject of a relief assignment within the meaning of 48½ (e), such services or duties became subject to the provisions of 57 (f). Rule 57 (f) contemplates that when duties or services remain, as here, to be performed, that the same may be performed by an extra, unassigned or furloughed employe who will otherwise not have forty (40) hours of work that week, and in all other cases by the regular employe.

Claimant here held a regular assignment as Clerk-Accountant, and as such was not an extra, unassigned or furloughed employe who would otherwise not have forty (40) hours of work that week. Neither was the Claimant "the regular employe" within the meaning of Rule 57 (f). The "regular employe" was the occupant of the Steno-Ticket Clerk position, therefore since claim for reparations is brought in the name of the wrong claimant the claim for compensation will be dismissed.

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 violated in accordance with the above Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1957.