

Award No. 8004

Docket No. CL-7672

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 4-C-1, 5-E-1(h) and (i), and Extra List Agreement No. 4, Crew Dispatcher's Office and Yard Office, Fort Wayne, Indiana, Fort Wayne Division during the period November 18, 1951 to March 2, 1952, inclusive.

(b) Claimant J. E. Scherer, Extra Clerk, be compensated eight hours pay per day at the pro rata rate as a penalty for Sundays December 2, 9, 16, 23 and 30, 1951, and January 6, 13 and 20, 1952, account of Clerk J. L. Rodgers, who is the regular incumbent of relief position No. 1, being used on an extra assignment in the Crew Dispatcher's Office from 4:00 P. M. to 12:00 Midnight on the above dates.

(c) Claimant J. E. Scherer, Extra Clerk, be compensated eight hours pay per day at the pro rata rate as a penalty for Sundays, December 9, 16, 23 and 30, 1951; January 6, 13, 20 and 27, 1952; and February 3 and 10, 1952, account Clerk J. R. Perfect, who is regularly assigned to relief position No. 4 being used to fill a vacancy on Position B-12 in Fort Wayne Yard from 7:00 A. M. to 3:00 P.M., on the above dates.

(d) Claimant J. L. Rodgers, Clerk, regularly assigned to relief position No. 1 at Fort Wayne Yard be compensated eight hours pay per day at the punitive rate as a penalty for Sundays, November 18 and 25, 1951; December 2, 9, 16, 23 and 30, 1951; January 6, 13, 20, 27, 1952; February 3, 10, 17 and 24, 1952; and March 2, 1952, for being removed from his regular relief assignment on Position B-12, and required to perform service outside his regular assignment as an Extra Crew Dispatcher on the above dates.
(Dockets W-855, W-857, W-858)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express

of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claims of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligation with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the provisions of the applicable Agreement, particularly Rules 4-C-1 and 5-E-1 (h) and (i) and the Extra List Agreement No. 4 were not violated in this case; that Carrier was properly entitled under the Agreement to assign the Crew Dispatcher's work to the incumbent of Relief Position No. 1 as part of his regular assignment and that Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: In June 1951 Relief Position No. 1 was advertised with regularly assigned days of Wednesday through Sunday, relieving positions with tours of duty from 12:00 Midnight to 8:00 A. M., with the exception of Sunday. On the latter day the relief position was scheduled by bulletin to protect Position B-12-G, which had a tour of duty from 8:00 A. M. to 4:00 P. M. Clerk J. L. Rodgers was the successful bidder but upon awarding him this relief assignment the Carrier advised that instead of relieving Position B-12-G on Sunday Rodgers was to work in the Crew Dispatcher's office from 4:00 P. M. to 12:00 Midnight on said day. The advertised tours of duty on Saturday and Sunday for this relief assignment represented sixteen hours of continuous service. (A previous incumbent of Relief Position No. 1 also had been scheduled by bulletin to relieve a position on Sunday from 8:00 A. M. to 4:00 P. M. but was instructed to work instead in the Crew Dispatcher's office from 4:00 P. M. to Midnight. He worked as stated from October 1949 to about June 1951.) Clerk Rodgers took no exception to the change in his bulletined schedule as described above, and worked in the Crew Dispatcher's office on Sunday, second trick, until early in 1952, when Relief Position No. 1 was readvertised to effect changes in rest days and positions relieved.

The three separate claims consolidated in this case all revolve around the question as to whether the Carrier violated the Agreement by using Clerk Rodgers under the circumstances here indicated. The Organization contends he was used in extra service in the Crew Dispatcher's office on Sunday since there was no position in said office to be relieved on the second trick that day, and there was no vacancy existing in a regular position. It is asserted Extra Clerk J. E. Scherer should have been called to perform this extra work.

It is also urged that Clerk J. R. Perfect was used to fill the Sunday vacancy in Position B-12-G which Clerk Rodgers was scheduled to work by advertisement, and that this use of Perfect improperly deprived Extra Clerk Scherer of work. Finally, compensation is requested for Rodgers for being removed from relieving Position B-12-G and being required to work as an Extra Crew Dispatcher.

We are of the opinion that the Carrier's action with respect to the Sunday assignment of Clerk Rodgers was in violation of the Agreement. Contrary to Management's contention, the circumstances surrounding the removal

of Rodgers from his advertised first trick Sunday assignment to the noted second trick duty was not the type of change contemplated by Rule 3-C-1(c), which deals with permanent change in assigned hours. Nor was the Carrier's action sanctioned by Rule 5-E-1(e), which treats with the establishment of relief assignments. It is clear from the record that at the time the Carrier advertised this relief position, there was no intention to work the prospective incumbent during the bulletined hours, or to protect the regular position stated in the bulletin. Clerk Rodgers was improperly removed from his bulletined Sunday assignment in violation of Rule 4-C-1 (absorbing overtime). He was used to perform a full tour of duty in the Crew Dispatcher's office which otherwise the regular employee would have been entitled to perform on overtime, it appearing that there was no available extra or unassigned employee who had not already completed forty hours of work during the weeks in question.

Proper remedy requires that Clerk Rodgers be compensated in the amount of eight hours pay at pro rata rate for the Sundays stated in part (d) of the claim. Punitive rate is not justified. Part (b) of the claim must be denied. Claimant Scherer was an Extra Clerk who had already completed forty hours of work during each of the weeks for which Sunday pay is requested. Moreover, an award of compensation to Scherer would have the effect of imposing a double penalty on the Carrier for the subject violation. A sustaining award on part (c) also would represent a double penalty. In this instance, however, the Union's contention must be rejected on the additional ground that the evidence does not show that Clerk Perfect was used to fill a Sunday vacancy in Position B-12-G.

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 Carrier violated the Agreement.

AWARD

Parts (a) and (d) of the claim sustained in accordance with the Opinion and Findings. Parts (b) and (c) of the claim are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 11th day of July, 1957.