

Award No. 8005
Docket No. CL-7678

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**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated the Clerks' current Agreement when it failed to use Bill Clerk Charles Oliver, Florida Street Station, St. Louis, Missouri, to perform the duties of his position on his Sunday rest day, but instead, required such duties to be performed by a Platform Foreman.

(2) That Charles Oliver and his successors be compensated for eight hours at time and one-half rate for Sunday, September 4, 1949, and for each Sunday thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Charles Oliver, Florida Street Station, St. Louis, Missouri, is regularly assigned to the position of Bill Clerk, Monday through Friday, with Saturday and Sunday rest days. There is no relief employee assigned to perform the work required on his rest days and Bill Clerk Oliver is called to work his position on his Saturday rest day at penalty rate. On his Sunday rest day the work of the position of Bill Clerk is performed by Platform Foreman L. G. Howell. Prior to September 1, 1949, the occupant of the position of Bill Clerk was called by Carrier on Sundays to perform the work required on his position on his Sunday rest day. Since September 1, 1949, Carrier has required the Platform Foreman to write up memorandum waybills on Sunday and perform other duties which are assigned to the Bill Clerk, Monday through Friday, and which are not a part of the Platform Foreman's assigned duties.

Employes' Exhibit A is a reproduction of a memorandum waybill.

Carrier's Advertisement No. 38 of July 21, 1949, describes the duties of the Platform Foreman position, Florida Street Station, St. Louis, Missouri, as follows:

"Briefly, duties consist of assigning various duties to gangs, marking up cars for loading, advising Acme what cars are in and what we are working, and supervising loading of Acme freight."

expedient of staggering the work weeks of the Agent-Telegrapher and the Telegrapher-Ticket Clerk. Under such circumstances the rules governing regular relief assignments and work on unassigned days have no application. **We have repeatedly held, and correctly we think, that the assignment of regular relief positions and of work on unassigned days is not a condition precedent to the staggering of work weeks.** The meaning of the 40 Hour Work Week Agreement is quite the contrary; the Carrier may procure the performance of all necessary work that it can by the staggering of work weeks before the assignment of rest day work comes into the picture. It is clear therefore that the Carrier did not violate the Agreement under the facts and circumstances shown in the present case." (Emphasis ours).

The dispute involved in Award 6946 resulted from Carrier assigning Telegrapher-Clerk a work week of Tuesday through Saturday with rest days of Sunday and Monday, and assigning the Agent-Telegrapher at same station a work week of Monday through Friday with rest days of Saturday and Sunday. On Monday the Agent-Telegrapher was assigned to perform work of Telegrapher-Ticket Clerk and Telegrapher-Ticket Clerk was assigned to perform work of the Agent-Telegrapher on Saturday.

Without prejudice to its position, as previously set forth herein, that the claim of the Employees in the instant dispute is entirely without support under the Agreement rules, the Carrier further asserts that the Employees' claim that Bill Clerk Charles Oliver be compensated on the basis of eight hours at penalty time and one-half rate for work not performed on Sunday is contrary to the well established principle consistently recognized and adhered to by the Board that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967, 6158, 6358, 6562, and others.

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the Agreement rules and should be denied in its entirety.

All data herein has been presented to representatives of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises at a terminal freight warehouse in St. Louis which handles LCL merchandise of the Carrier's freight subsidiary, Acme Fast Freight Co. merchandise cars, and similar cars of other forwarding companies. The terminal is a seven-day operation. On Sundays, however, the Carrier does not operate the SWT-Rail facilities but it does operate inbound facilities and the Acme facilities on said days.

Prior to the introduction of the forty-hour week on September 1, 1949, the claimant Bill Clerk, Charles Oliver, worked Monday through Saturday with rest day on Sunday. His various duties included the preparation of revenue waybills showing weight, rate, charges, etc. The claimant was called in on his Sunday rest days to perform such work, being compensated at the penalty rate.

With the introduction of the forty-hour week, the Claimant was assigned a work week of Monday through Friday, with Saturday and Sunday rest days. The Platform Foreman at this location, who is covered by the same Agreement and is in the same class and seniority district, but receives a rate of pay above that for Bill Clerk, also was placed on a five-day work week, with rest days on Friday and Saturday (subsequently changed to Thursday and Friday). A regular relief position was established to protect the

Foreman's position on his rest days. A relief position was not established to fill the Bill Clerk position on the claimant's rest days, however.

Since September 1, 1949, the claimant has been called in on Saturdays at penalty rate. On Sundays, the Platform Foreman has been required to prepare memorandum waybills on which cars containing Acme shipments of LCL merchandise move out of St. Louis. On a subsequent day, the rates and charges are prepared from the memo waybills by the Bill Clerk and are forwarded by mail.

The Organization contends: The Carrier has violated the Agreement by requiring the Platform Foreman to perform Bill Clerk's work on Sundays. This work is not a part of the Foreman's assignment and is not listed in his bulletined duties. A relief assignment not having been established to perform this work, Rule 32-8 (Work on Unassigned Days) is applicable. Inasmuch as the Carrier did not use an available extra or unassigned employee who otherwise would not have had forty hours of work that week, it was required to call the Claimant who was the regular employee.

The Carrier responds: The Agreement does not require that relief positions be established to cover all rest days, nor do they prohibit assigning to an employee who is regularly assigned to work on the rest days of another employee, some work that is performed by such other employee on the other days of the week. In view of the reduced operation of the terminal on Sundays, there is no need for a Bill Clerk as there is on Saturdays, or as there was on Sundays prior to September 1, 1949, when the Clerk expensed inbound billing and handled diversions in addition to other duties. The preparation of memo waybills on Sundays has been assigned to the Platform Foreman, and thus Rule 32-8 does not apply. Moreover, the preparation of memo waybills is not work which is commonly limited to Bill Clerks.

There is no contention that the Platform Foreman is not qualified to prepare memo waybills. As previously noted, his position is covered by the Clerks' Agreement, and is in the same class and seniority district as that of the claimant Bill Clerk. It is apparent from the record that on Sundays the operations conducted do not require the full-time services of a Bill Clerk even if he prepared revenue waybills on said days. It is also noted that the claimant Clerk has continued to prepare and forward on a subsequent day the revenue waybills for the Sunday shipments.

Under the confronting circumstances, we are of the opinion that the work in dispute was properly made a part of the Platform Foreman's assignment on Sundays. We do not think the Carrier was required to call an extra clerk or the claimant, or otherwise to establish a regular relief position to perform this work. It is urged that the preparation of memo waybills was not "assigned" to the Platform Foreman position since this duty was not listed in the advertisement for said position. We do not think this is a fatal defect. The disputed work is a minor part of the Platform Foreman's duties. The Agreement requires only a "brief description of duties" in the bulletins (Rule 10-2).

In summary, it is concluded that the Sunday work in question was properly assigned to the Platform Foreman position and that in consequence Rule 32-8 (Work on Unassigned Days) does not apply.

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 did not violate the Agreement.

AWARD

Claim 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.