

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Norris C. Bakke, Referee**

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**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD  
COMPANY**

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

1. Carrier violated the provisions of the Clerks' Rules Agreement when on Thanksgiving Day, November 25, 1954, it failed to utilize Relief Clerk L. A. Scholl to perform the work of his regular assignment, Relief Train Clerk Position No. 4 at Bensenville, Illinois.

2. Carrier shall now be required to compensate Relief Clerk L. A. Scholl for eight (8) hours at the penalty rate of Position No. 580 for November 25, 1954.

**EMPLOYEES' STATEMENT OF FACTS:** Employee L. A. Scholl, seniority date May 4, 1948, was regularly assigned to Relief Train Clerk Position No. 4 at Bensenville, Illinois, with assigned rest days of Sunday and Monday.

Relief Position No. 4 was assigned to relieve C. Blackmore on Position No. 497 on Tuesday, First Train Clerk L. E. Conley on Position No. 580 on Wednesday and Thursday and W. Grosnick on Position No. 571 on Friday and Saturday.

On Thursday, November 25, 1954, Carrier advised Relief Employee L. A. Scholl that Position No. 580 would not work on that day. The duties normally assigned to Position No. 580, which are performed by Employee Conley on the regular work days of the position and performed by Employee Scholl on the rest days, consist of the following duties in connection with inbound IHB, Belt and S. E. trains:

Enter trains on inbound record sheet.

Stamp the waybills.

Check each bill against the order book for diversions.

Pull cards for loads and empties according to routing and special instructions prevailing at the time.

thereby assured the claimant irrespective of the holiday rule. The Board said:

"To us their agreement means in respect to working employees on holidays, the carrier has two alternatives. It may work them, or it may not. But if it chooses the former alternative, it incurs a penalty in the form of paying time and one-half rates for the holiday hours worked."

We necessarily conclude that claimant was entitled only to the hours worked on the holiday at the time and one-half rate. He was so paid and a valid claim does not exist."

There is no basis for the claim presented in behalf of employee L. A. Scholl and the Carrier respectfully requests a denial award.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This docket and Docket CL-7905 are submitted together because they involve the same Carrier, the same rules and identical factual situations except different claims.

The dispute arises because the Carrier blanked position No. 580 a Clerk's position, on certain holidays and allowed the Chief Yard Clerk to perform the duties thereof.

It is admitted by both sides that the work falls in the category of work for unassigned days, but Carrier defends its action by seeking to rely on items 1 and 2 from Memorandum of Agreement No. 9 revised September 1, 1952, particularly that portion of item 2 which reads

"When an employee is called for overtime work on a holiday other than as provided in Paragraph 1 and the work is **preponderantly** the duties of a specific position, the employee regularly assigned to that position will be called. \* \* \*" (Emphasis ours.)

It is admitted that claimants in both dockets qualified under the rule if position No. 580 had not been blanked on the holidays involved.

We think the issue in these two dockets resolves itself into the question of whether the work done by the Chief Clerk on the days involved was "preponderantly" the work belonging to position No. 580.

On January 6, 1955 A. T. Martinek the Chief Clerk who did the work wrote to Employees' Division Chairman as follows (Docket CL-7905):

"Regarding claim of C. E. Conley, 1st Train Clerk, Pos. 580 for July 5, 1954 & Sept. 6, 1954.

I recall that on both days the work generally performed by Conley was done by myself and some of the other train clerks. July 5th, 1954, I did the greatest part of Conley's normal duties.

On Sept. 6th, 1954, I did some of his work and the balance of it was performed by other train clerks.

I did this in order to keep things moving and avoid delays to trains."

Later Martinek wrote a letter to the Carrier in effect repudiating what he had written to the Division Chairman, and it is upon this, together with

certain tours of duty of Martinek's that Carrier seeks to avoid payment of these claims.

In attempted justification for Martinek's action the Carrier's representative on the Board says in his brief

"It is unfortunate in this case that the Chief Yard Clerk saw fit to give seemingly conflicting (they are actually conflicting) statements \* \* \* We have no means or facilities for resolving conflicts \* \* \*" (Parenthesis supplied.)

It is at this point that the Carrier falls into error. The record is conclusive on the point that the Organization repeatedly requested the Carrier to make a joint check on the work involved, and the Carrier replied in effect that it would be just a waste of time. This is one facility for settling disputes.

The Carrier's attempt to rely on the theory of the work not belonging "exclusively" to Claimants in these two dockets is unavailing here because the rule, item 2, supra relied upon by Claimants uses the word "preponderantly". The work relied upon was preponderantly that of Claimant.

Our conclusion is that the Carrier violated the agreement and the claim should be sustained. Award 7134.

**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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois this 12th day of March, 1958.