

Award No. 8344
Docket No. CL-8015

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

DES MOINES UNION RAILWAY COMPANY

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

- 1) Carrier violated the intent and provisions of the Clerks' Rules Agreement when it required employe M. P. McGriff to suspend work on his regularly assigned checker position at Des Moines, Iowa, on December 25, 1954 and January 1, 1955 and had the duties regularly performed by Employee McGriff performed on those days by L. H. Reynolds, who is regularly assigned to the Yard Clerk Position at W. 11th St.
- 2) Carrier shall therefore be required to compensate Employee M. P. McGriff for eight (8) hours at the penalty rate of his regular position for Saturday, December 25, 1954 and Saturday, January 1, 1955.

EMPLOYEES' STATEMENT OF FACTS: Employee McGriff is the regular occupant of Checker Position No. 1, being assigned to the position in accordance with the provisions of the Clerks' Rules Agreement bearing effective date of September 1, 1949; and is assigned to that position from 7:00 A.M. to 3:00 P.M., Thursday through Monday, with Tuesday and Wednesday as assigned rest days. The rest days are included within a regular relief assignment. The rate of the Checker Position is \$14.06 per day.

The principal duties regularly performed by Employee McGriff on Checker Position No. 1 are: Checking cars in the yards; carding cars for trains; making up cards; checking industrial tracks; including the checking and carding of Wabash Train No. 95.

On December 17, 1954 Carrier posted a bulletin advising as follows:

"ALL CLERKS:

On Christmas December 25th and New Year's January 1st, only the following assignments will work on those days:

performed which was the exclusive work of this claimant. No additional employe was used to perform exclusive work of claimant's position. His claim is not valid."

This Board has often cited the principle that if clerical work incident to a position increases and is assigned to another position, that when it decreases, the Carrier may abolish the position and return the remaining work to the position from whence it came and to which it is incident. That principle was upheld although such clerical work was incident to a position outside of the Clerks' Agreement. See Award Nos. 806, 1405, 1418, 2138, 2334, 3211, 3735, and 3989 of this Division.

It should be noted that the Committee has claimed time and one-half for Mr. McGriff. Time and one-half is a penalty established to discourage the carrier from requiring an employe to work under the conditions for which the penalty rate is prescribed. This is a request for a double penalty account of the carrier not requiring the employe to perform work, notwithstanding the existence of a penalty rule which exists for the purpose of discouraging the carrier from requiring an employe to work on a holiday.

In conclusion, the Carrier has shown that it has not violated any rules of the Clerks' Agreement, but rather that it has complied with them.

The Carrier affirmatively states that the substance of all matters referred to herein has been made the subject of correspondence or discussion in conference between the representatives of the parties hereto.

The claim is without basis under the rules of the Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was the regular occupant of a seven-day position, Yard Checker No. 1, at Carrier's West 11th Street Yard, Des Moines, Iowa, with assigned hours 7:00 A.M. to 3:00 P.M., Thursday through Monday and rest days Tuesday-Wednesday. His principal duties included the checking of trains and the carding of cars, including checking and carding Wabash Train No. 95. His rest days were part of a regular relief assignment.

At above location Carrier maintained three yard clerk positions around the clock. There were also two Yard Checker positions, Claimant's 7 A.M.-3 P.M. position plus one other, 3 P.M.-11:00 P.M. During the hours 11:00 P.M.-7 A.M., on all days and from 3:00 P.M. to 11 P.M. on Saturdays and Sundays (the rest days of Yard Checker position No. 2) Yard Checkers were not employed. In these hours the respective Yard Clerks included among their duties the checking of trains, the carding of cars, and other work done by the Yard Checkers when on duty. The record does not show that the Yard Clerks performed work of this sort when the Yard Checkers were on duty.

On December 17, 1954, Carrier by bulletin notified Clerks and Checkers that on Saturdays, December 25, 1954 and January 1, 1955, the three Yard Clerk positions would work around the clock. But Claimant's Yard Checker position was blanked on those otherwise regular workdays of his. On each of those holidays Yard Clerk Reynolds checked and carded Wabash Train No. 95, normally done by Claimant McGriff.

The issue posed by the instant claim comes down to this: Under the Parties' Agreement did the Carrier have the right to permit Yard Clerk Reynolds to make the above-mentioned check?

A number of Awards by this Division (e.g., 7396, 7294, 7136, 6531, and 6385) establish that, under language similar or identical to that in Rules 26(b) and 16(b) cited above by the Parties, a carrier has the right to blank a position on a holiday when the work of the position is not performed.

Awards of this Division (e.g., 7134) also establish that under such language and under Decision No. 2 of the Forty-Hour Week Committee and under language similar or identical to that in Rule 7 of the instant Agreement, if regular work is to be performed on a holiday it must be performed by the regularly assigned employee rather than by an extra man. That is, under such circumstances the Carrier may not blank the regular employee's position.

Awards of this Division (e.g., 7137) further establish that under such language a Carrier has the right to blank a regular employee's position on a holiday and give some of his normally performed duties to another regular employee if the latter is entitled to do the work and sometimes does it while the former is on regular duty. In other words, some duties of a regular employee's blanked position may be done on a holiday by another regular employee if the former does not possess exclusive "title" to same on regular work days.

The above-stated issue then in the instant case becomes one of fact: Does the record contain substantial evidence compelling the conclusion that Claimant McGriff had exclusive "title" to checking and carding Wabash Train No. 95 on the days when he was on regular duty?

On behalf of an affirmative answer to this question stands the fact that the position filled by Claimant was a seven-day one, with rest days of Claimant part of a regular relief assignment. From this it may be concluded that on normal days Yard Clerk Reynolds was not used to check Wabash Train No. 95. There is also positive evidence that, when McGriff was on duty, he always checked and carded that train. Carrier does not assert otherwise but limits itself to the statement that, during hours when Yard Checkers were not regularly assigned, e.g., 11 P.M. to 7 A.M., on all days, Yard Clerks checked and carded trains. We do not think that this is sufficient to compel the conclusion that on McGriff's regular work days Yard Clerk Reynolds shared with Claimant the work of checking and carding Wabash Train No. 95 (or for that matter, other trains). On the contrary. The record supports the conclusion that this work was exclusively McGriff's on his regular workdays.

Such being the answer to the factual question, it follows from the reasoning set forth in the Awards cited (particularly 7134, 7136, and 7137) that Carrier did not have the right to permit Yard Clerk Reynolds to check and card Wabash Train No. 95 on December 25, 1954, and January 1, 1955. A sustaining award is in order.

This conclusion, however, does not wholly dispose of the instant claim. The System Committee of the Organization does not establish that on those days Yard Clerk Reynolds performed any duties of McGriff other than those connected with Wabash Train No. 95. Claimant asks for eight hours compensation at penalty rate. Penalty rate will be allowed (Awards 5837; 7134). But it will be allowed only in accordance with the provisions of Rule 15 (a) of the Parties' controlling Agreement, which states that an employee called to perform work not continuous with his regular work period shall be paid a minimum of three hours for two hours work or less, with time and one-half on the minute basis if he works more than two hours on such call.

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 Employee involved in this dispute are respectively Carrier and Employee 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 as per Opinion.

AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1958.