

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**

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

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

1. Carrier violated the Clerks' Rules Agreement when, effective with the establishment of the 40-Hour Week Agreement on September 1, 1949,

(a) It assigned Position No. 430, classified as Clerk in the R/C Demurrage Departments at Fowler Street, Milwaukee, Wisconsin, a position on which the duties could reasonably be met in five days, to work Tuesday through Saturday with Sunday and Monday as assigned rest days and required the occupant of that position to perform relief work on Position No. 428, Reconsigning Clerk, on Saturday;

(b) It required the occupant of Position No. 520, classified as Junior Rate Clerk, to suspend work of his regular assignment on Mondays and perform the work regularly assigned to Position No. 430 on that day.

2. Employees E. T. Nowicki, A. R. Stollenwerk, C. J. Stasiowski, A. Stullick and E. J. Franco be compensated for eight (8) hours at the straight time rate of their respective positions for each Monday, subsequent to September 1, 1949, they were not permitted to work their regular positions.

3. Employees E. T. Nowicki, A. R. Stollenwerk and C. J. Stasiowski be compensated for the difference between what they were paid and eight (8) hours at the time and one-half rate for work performed on Saturdays subsequent to September 1, 1949.

4. Employee George Dietrich be compensated for eight (8) hours at the time and one-half rate of his regular position for each Satur-

day subsequent to September 1, 1949 that Employees E. T. Nowicki, A. R. Stollenwerk and E. J. Stasiowski were used to perform the work on his regular assigned position of Reconsigning Clerk.

EMPLOYEES' STATEMENT OF FACTS: At Fowler Street Freight House, Milwaukee, Wisconsin, the Carrier maintains, in addition to others, the following positions:

Position No. 430—Clerk R/C and Demurrage Departments

Position No. 520—Junior Rate Clerk

Position No. 428—Reconsigning Clerk

Prior to September 1, 1949, those positions were assigned to work six days per week, Monday through Saturday, with Sunday assigned as the rest day. Effective with the establishment of the 40-Hour Week, September 1, 1949, and continuing until March 1952, those positions were assigned to work as follows:

Position No. 430—Clerk R/C and Demurrage Departments, 8 A.M. to 5 P.M.—Tuesday through Saturday with Sunday and Monday as assigned rest days. Rate of Pay: \$13.656 per day. The occupants of that position during the period involved were, in the order named, E. T. Nowicki, A. R. Stollenwerk and C. J. Stasiowski.

Position No. 520—Junior Rate Clerk, 8 A.M. to 5 P.M.—Monday through Friday with Saturday and Sunday as assigned rest days. The occupants of that position during the period involved were A. Stullick and E. J. Franco.

Position No. 428—Reconsigning Clerk, 8 A.M. to 5 P.M.—Monday through Friday with Saturday and Sunday as assigned rest days. Rate of Pay: \$15.496 per day. Employee George Dietrich regularly occupied that position.

Effective with the establishment of the 40-Hour Week, September 1, 1949, the regular occupant of Position No. 430—Clerk R/C and Demurrage Departments, was required to suspend the work attached to that position on Saturdays and perform the duties assigned to Position No. 428—Reconsigning Clerk. For such work he was compensated at the straight time rate of the Reconsigning Clerk position.

On Mondays the occupant of Position No. 520—Junior Rate Clerk, was required to suspend work on that position and to perform the duties regularly assigned to Position No. 430—Clerk R/C and Demurrage Departments.

POSITION OF EMPLOYEES: There is an agreement between the parties bearing effective date of September 1, 1949. We quote some of the rules of that Agreement for ready reference:

Rule 12—Reducing Forces

“(d) When forces are increased or vacancies occur, furloughed employees, when available, shall be recalled and returned to service in the order of their seniority and employees shall be required to return when so called. Available furloughed employees recalled for extra work shall be required to return when called except as provided in Section (e) of this rule. Furloughed employees failing to return to

that all claimants have been paid a full 5 days pay for each week involved in accordance with the schedule rules, particularly Rule 15 (e), that they are entitled to nothing more under the schedule rules and there is no provision which supports the additional penalty claimed. The Carrier respectfully asks that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, Position 428 (Reconsigning Clerk) and Position 430 (Grain Clerk-Reconsigning and Demurrage) were filled six days per week, Monday through Saturday, at Fowler Street Freight Office, Milwaukee, Wisconsin. Effective September 1, 1949, the incumbent of Position 428 was placed on a work week of Monday through Friday, while the occupant of Position 430 was regularly assigned Tuesday through Saturday. The evidence indicates that both of these positions remained as six-day positions. On Mondays the Reconsigning Clerk also did some of the work of the other position (430) while on Saturdays the Grain Clerk also performed certain work of the nature handled by the Reconsigning Clerk. Both positions were of the same craft and class, and held identical assigned hours. It is apparent that to this point, at least, Carrier properly staggered the work week of employees in two six-day positions, and that no violation of the Agreement occurred.

There also existed at this location Position 520 (Junior Rate Clerk) with the same assigned hours, and in the same craft and class, as the other two positions in question. Position 520 became a five-day position in the Rate Department following introduction of the 40-Hour Work Week. On Mondays, however, Carrier utilized the Junior Rate Clerk to perform certain work accruing to Position 430, such work being performed under the direction of the Reconsigning Clerk (428) who, as previously noted, was regularly assigned Monday through Friday. The question is whether the use of the Junior Rate Clerk on Mondays in the manner indicated was violative of the Agreement. The period covered by this claim ended in March, 1952, at which time the regular occupant of Position 430 was placed on a Monday through Friday work week. Thereafter Saturday relief was provided to perform the work of both Positions 428 and 430.

Since there is no evidence of probative value to the contrary, we accept Carrier's statement that Monday was a light day in the Rate Department, with the result that there was little or no work to be done in the Department by the Junior Rate Clerk at that time. It also should be noted that this employee was paid the higher rate of Position 430 for each Monday during the period in question.

It is apparent that there was more work of Position 430 to be performed each Monday than the incumbent of Position 428 could do while also handling the necessary work of his own position. In effect, therefore, Carrier sought to stagger Position 520, a five-day position, with Position 430. This is not permissible under the Agreement, however. A five-day position may not properly be staggered with a six-day position.

There is no basis for awarding compensation to the Junior Rate Clerk, however. He suffered no loss. Indeed, he actually gained by virtue of the higher pay received on Mondays. But since the assignment of this employee could not properly be made to the work of Position 430, we must sustain

a claim for compensation, although at pro rata rate, for each Monday during the period in question in behalf of the successive incumbents of Position 430 during that period. All other requests for compensation contained in this claim must be denied.

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 to the extent indicated in the above Opinion.

AWARD

Claim sustained in part in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1958.