

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, at Meridian, Mississippi, it failed to call B. O. Schrock, Yard Clerk, to perform necessary work on his position on February 22, 1955, a recognized holiday; the Carrier violated the Agreement when it failed to call B. O. Schrock, Yard Clerk, Etta Tate and Annie Bishop, Yard Clerks, to perform necessary work on their respective positions on April 26, 1955, a recognized holiday, and

(b) Claimant Schrock shall be paid two days at proper rate of time and one-half, and Claimants Tate and Bishop shall be paid one day each at proper rate of time and one-half.

EMPLOYES' STATEMENT OF FACTS: On February 22, 1955, a recognized holiday, Claimant, Mr. B. O. Schrock, was regularly assigned to the position of Yard Clerk. It was necessary that the duties of the position be worked on the holiday and, instead of calling Claimant Schrock, the duties regularly performed by him were required of a Rate and Route Clerk.

On April 26, 1955 (Memorial Day) Yard Clerks Schrock, Etta Tate and Annie Bishop were not called to perform necessary work regularly assigned to and performed by them. Instead, their regularly assigned duties were required of other Clerks who were called for service on that holiday.

Claims were duly filed and appealed up to and including the highest officer of the Carrier designated for that purpose. Conference was held on December 13, 1955, the Carrier reaffirming its previous declination.

Correspondence in connection with the claims is attached hereto and identified as Employees' Exhibits "A" through "P".

clerks regularly perform yard office clerical work on each shift the same as other clerks in the yard office.

With respect to the employees' contention that a position may not be blanked on holidays if any work of such position is performed, Carrier points out that such contention is contrary to decisions of the Third Division in the above cited Awards involving similar claims. For example, Award 6080 involves claim of a clerk for a day's pay because his position was blanked on a holiday and another clerk in the same office performed all the work necessary to be done in the office on the holiday. Again in Award 7137, the Board stated the factual situation in the first paragraph of the opinion of the Board to be as follows:

"On Thursday, January 1, 1953, a holiday, claimant's position was blanked and other clerical employees performed the necessary work of the position on that day."

The evidence of record does not substantiate the claim that Carrier violated the effective agreement by blanking claimants' positions on the holidays involved. To the contrary, the evidence shows that the positions were blanked in accordance with the specific terms of Rule 46 (f) (1). For the reasons herein, Carrier respectfully requests that the claim be denied.

All pertinent facts and data used by the Carrier in this case have been made known to the employee representatives.

(Exhibits not Reproduced.)

OPINION OF BOARD: Claimants Schrock, Bishop and Tate, occupants of Yard Clerk positions on the first, second and third shifts, respectively, allege that they should have been called on designated holidays and because Carrier failed to do so ask this Board to hold that there was a violation of the Agreement, relying principally upon Rules 28 and 32; also Section 5, Article 2 of the August 21, 1954 National Agreement.

Carrier shows that there are three (3) Yard Clerks and one (1) Rate and Route Clerk assigned to work on the first shift, two (2) Yard Clerks and one (1) Rate and Route Clerk assigned to work on the second shift, and three (3) Yard Clerks and one (1) Rate and Route Clerk assigned to work on the third shift.

The prevailing duties covering the rate and route clerks positions are identical on the three shifts being covered by the same bulletin covering rate and route clerks positions; the yard clerks positions are also identical on the three shifts they being covered by the same bulletin covering yard clerk positions.

All of the Claimants received pay for the holiday in question as provided in Section 1 under Article 2, but they allege that the violation of the agreement was caused when the Carrier neglected to call them as they should have been given preference to work their positions on said holiday(s).

We agree with Claimants when they cite Rule 28 "(1) that in the case of overtime work before and after assigned hours, the occupant of the position will be given the preference and, (2) that in the case of overtime on rest days and holidays, this same principle will apply", however, we must also agree and admit that the Carrier has the right under Rule 46(f)(1) to dispense with an employee's services on a holiday. The evidence here shows that

all yard clerk positions have the same identical duties, so we must agree that if the Yard Clerks used (called) were sufficient in number to perform the holiday work load the preference rule has been complied with as they too have the same preference to their regularly assigned work. There is no evidence contained in this record to show that any of the called employes performed work which they were not entitled to perform as part of their regular assignment.

After a review of the record and the rules applicable to this case we are unable to find any violation of the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 6th day of July, 1959.