

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, 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 Carrier:

1. Violated the Clerks' Rules Agreement effective with establishment of the 40 Hour Week on September 1, 1949 when it transferred interchange work regularly assigned to and performed Monday through Friday by the occupants of Positions No. 36 and No. 44 at Madison, Wisconsin freight office to the yard office and required yard clerks assigned to seven-day positions to perform that work on Saturday and Sunday.

2. Shall return the interchange work now being performed on Saturday and Sunday by yard clerks in the yard office at Madison, Wisconsin to the regularly established positions in the freight office assigned to this class of work.

3. Shall compensate Employee G. A. Dahnke for eight (8) hours at the time and one-half rate of Position No. 36 for each Saturday and Sunday work of Position No. 36 was performed from September 1, 1949 to February 14, 1950.

4. Shall compensate Employee D. J. DiLoreto for eight (8) hours at the time and one-half rate of Position No. 36 for each Saturday and Sunday that work of Position No. 36 was performed from September 29, 1952 until the violation is corrected.

5. Shall compensate Employee P. J. O'Connor for eight (8) hours at the time and one-half rate of Position No. 44 for each Saturday and Sunday that work of Position No. 44 was performed from September 1, 1949 until November 26, 1955.

6. Shall compensate Employee P. J. O'Connor for three (3) hours at the pro rata rate of Position No. 44 for each day work of Position No. 44 was performed, before or after the regularly assigned hours of that position, from September 1, 1949 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Position No. 36, East Side Yard Clerk, and Position No. 44, Interchange Clerk, are located in the freight office at Madison, Wisconsin and are under the jurisdiction, and carried on the payroll, of the Freight Agent. Other yard clerks at Madison, Wisconsin are located in the yard office and are carried on the payroll of the Superintendent. Although all of the positions are in one seniority district, Positions No. 36 and No. 44 are in one sub-division of the department and yard clerks are in another sub-division of the department. There is also considerable difference in the duties assigned by bulletin to Positions No. 36 and No. 44 and the duties assigned by bulletin to yard clerk positions located in the yard office, as shown by Employees' Exhibits "A" to "F" inclusive. The work in the freight office is performed on a one shift per day basis. Positions No. 36 and No. 44 are assigned from 7 A. M. to 4 P. M. with one hour for lunch. Positions in the yard office are assigned on a three shift per day basis covering the 24 hour period.

Interchange work, as shown by Employees' Exhibits "A", "B" and "C", is a principal duty assigned to Positions No. 36 and No. 44 at Madison, Wisconsin and is regularly performed by the occupants of those positions during the assigned hours Monday through Friday.

Effective with the establishment of the 40 Hour Week on September 1, 1949, interchange work consisting of making a checking of cars to be delivered to the C&NW transfer, handling the waybills and tendering a list of the cars to be delivered to the C&NW, which is regularly performed by the occupant of Position No. 36 Monday through Friday, is performed by yard clerks on Saturday and Sunday.

On Saturday and Sunday the yard clerks are also required to perform interchange work consisting of handling interchange cars to and from the Illinois Central Railroad, keeping record of waybills and tendering list of cars delivered, which work is regularly performed by the occupant of Position No. 44 Monday through Friday.

On November 26, 1955 the Illinois Central interchange work was returned to Position No. 44 on Saturday and Claimant O'Connor has since performed that work on Saturday on a call basis.

POSITION OF EMPLOYEES: The issue in this dispute involves the question of whether or not the Carrier is privileged to have work identified with single shift 5-day positions performed by the occupants of 7-day positions, during the hours and on the rest day when the regular occupants of the 5-day positions are not assigned to work, in order to avoid the payment of overtime to the regular occupants of those 5-day positions.

There is an agreement between the parties bearing effective date of September 1, 1949, copy of which is on file with your Honorable Board and which is made a part of this dispute by reference hereto.

Rules 28 and 32(f) of that Agreement read:

Rule 28—Work on Unassigned days

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the Petitioner's claim that the Carrier violated their Agreement when it transferred to its Madison, Wisconsin yard office interchange work regularly assigned to and performed Monday through Friday by the occupants of Positions No. 36 and No. 44 at the Madison, Wisconsin freight office, and required yard clerks assigned to seven-day positions to perform that work on Saturday and Sunday.

The record establishes that the duties performed by yard clerks on Saturday and Sunday are performed during their regularly assigned hours on these days. It is undisputed that all of the involved employees are of the same class, are in the same seniority district, on the same seniority roster, occupy positions paying the same rate of pay and are employed at the same location. Under the circumstances of the case, it is evident that the Carrier did not violate the controlling Agreement and that the claims are without merit. See Awards 8278, 8136, 6946 and 5555.

We also note that this claim was first presented to the Carrier on December 9, 1954, and made retroactive to September 1, 1949, a period in excess of five years. We consider this delay significant. While there is no time limitation involved, the delay in pressing the claim is entirely unreasonable. See Awards 8533 and 6526.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1959.