

Award No. 9439

Docket No. CL-8565

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated the Clerks' current Agreement when it instructed and required Route Clerk R. F. Tisdale to perform work of the Messenger position, Pine Bluff, Arkansas, on Sundays, one of the rest days of the Messenger position.

(2) That Mr. A. B. Seibs, the regular assigned Messenger, Agent's Office, Pine Bluff, Arkansas, be paid a minimum of eight (8) hours at the time and one-half rate for Sunday, August 23, 1953, and for all * subsequent Sundays until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. B. Seibs is the regular occupant of the Group 2 Messenger Position, Agent's Office, Pine Bluff, Arkansas, 10:00 A. M., to 7:00 P. M., one hour for lunch, which is a six day position. Mr. Seibs is assigned Monday through Friday; and a Relief Messenger works the position on Saturday. The regular assigned duties of the Messenger position consists of delivering messages and waybills to and from Yard Office, Division Superintendent's Office, Commercial Office, Ticket Office (Passenger Station), going to U. S. Post Office and Express Office, picking up mail and waybills and delivering them to Agent's Office and Transfer Shed, and placing carbon paper in waybill forms.

Mr. R. F. Tisdale is the regular occupant of Route Clerk position, Group 1, Pine Bluff Transfer Shed, Pine Bluff, Arkansas, 9:30 A. M., to 6:30 P. M., which is a seven day position. Mr. Tisdale is assigned Thursday through Monday, and a Relief Clerk works the position Tuesday and Wednesday, each week. The regular assigned duties of the Route Clerk consist of inserting routing on unrouted shipments, blocking all waybills with loading spot numbers, tracing origin roads for delayed cars and making daily situation report.

* Note: Claims for subsequent Sundays to be developed by a joint check of Carrier's payroll and other records.

in Rule 2, it is clear that the agreement itself contemplates that a clerical worker doing 4 hours of work defined in Rule 2 (a) shall perform 4 hours of other work within the scope of the agreement. Under such a situation, the purpose of defining clerical workers in Rule 2 (a) is to identify the higher skilled employees for pay purposes and to preserve to that group the higher rated positions. It does not have the effect of giving them clerical work exclusively or of limiting them to the performance of that work only."

The Carrier could properly assign the incidental work of picking up bills to a Group 1 position the same as it could assign addressing envelopes, handling mail, running duplicating machines, etc., to Group 1 employees.

The Carrier respectfully submits that the claim clearly is without merit under the rules and should be denied.

Without prejudice to its position the claim is not valid in any respect, the Carrier submits that the claim for time and one half rate for work not performed could not be sustained in any event. The principle consistently recognized and adhered to by the Board is that the right to work is not equivalent to work performed under the overtime and call rules of an Agreement; Awards 6871, 6730, 5764 and many others.

Also without prejudice to its position that the claim is entirely without merit in any respect, the Carrier respectfully submits that in no event could the retroactive claim be valid. Attention is directed to Award 6590 (Referee Rader) in which a retroactive claim was denied with the following Opinion:

"We view the date of filing claim, June 23, 1951, as the controlling date on payments for the violation. To sustain the prior date, April 17, 1950, as requested in (2) of the claim would be to set up a precedent which might permit serious abuses in the payment of like claims to any date retroactively going back to the alleged inception of the violation. The parties are familiar with the procedure as provided in the Railway Labor Act for the filing of claims. Failure to follow the procedure in the filing must defeat the request for payment back to April 17, 1950. See Awards 2852, 4281, 4282, 4428, 4437, 4964, 4966 and 5098."

The Carrier respectfully submits that the claim is not supported by the agreed rules, and should be denied in its entirety.

All data herein has been presented to representatives of the Employees in correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant alleges a violation of Rule 32-8 of the Agreement which provides:

"Work on Unassigned Days—Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The Claimant is a messenger who works Monday through Friday, 10:00 A.M. to 7:00 P.M. On Saturday the duties of his position are performed by a Relief Messenger. The claimed violation consists of the performance on Sundays by Route Clerk Tisdale of work which allegedly is performed by Claimant and his relief the remainder of the week.

Route Clerk Tisdale's position is a seven day position. Sunday is one of his regular work days. His normal hours are 9:30 A.M. to 6:30 P.M. It is clear that he habitually performs overtime work every day before the regular starting time of his position in varying amounts averaging an hour and a half daily. This work is necessary to the performance of his daily duties.

On Saturdays and Sundays he picks up mail on his way to his regular position of work at the Transfer Shed. The mail contains waybills required for his duties at the Shed. (There is no claim in regard to his performance of this mail pick-up on Saturdays.)

Basic to Claimants' position is the allegation that he performs the mail pick-up tasks Monday through Friday in the mornings. So, in the Submission, Employees aver, "From Monday through Saturday this Messenger work is performed by the regular Messenger and Relief Messenger" and "It [the mail pick-up on Sunday morning] is performed Monday through Saturday by the Messenger during his regular hours of assignment".

Undoubtedly Claimant does messenger work of the type in controversy in the *afternoons*. There is no showing that he performs such work, the *morning* mail pick-up for the Route Clerk, during his regular work days, Monday through Friday. On the contrary, the record shows that the Messenger does not do the claimed work on his regular work days. It is uncontradicted that the Station Porter does this work Monday through Friday so as to provide the Route Clerk with the needed waybills. On Saturday the morning mail pick-up is not performed by the Relief Messenger. He would be expected to perform it if it were within the normal duties of the regular position. There is no afternoon mail pick-up on Sunday of the type regularly made by Claimant. We find that the Sunday morning work in controversy is not "work of the Messenger position" on the other days of the week.

As this essential factual element of Claimants' case is lacking, there is not even a *prima facie* case of violation of Rule 32-8. There is no need to decide the procedural issues put forward by the Carrier.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 25th day of May, 1960.