

Award No. 9491

Docket No. CL-8917

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

1. That Carrier violated the current working agreement between the parties when on September 5, 1955 (Labor Day), it failed to call and use R. J. Kelly, regular assignee of position T-2389, West City Yard, Fort Worth, Texas, and instead called and used W. L. Young, regular assignee of Relief Position No. 6 to perform work on position T-2389, which work claimant Kelly performs during his regular assigned work week Monday through Friday.

2. That Claimant R. J. Kelly be compensated for one day of eight hours at rate of time and one-half for September 5, 1955 (Labor Day), the date in question.

EMPLOYEES' STATEMENT OF FACTS: Claimant R. J. Kelly is regularly assigned by exercising seniority to position T-2389, West City Yard, Fort Worth, working assigned hours 8:00 A.M. to 4:00 P.M. Monday through Friday with Saturday and Sunday as rest days. Mr. Kelly's seniority date is August 15, 1909.

Mr. W. L. Young is regularly assigned to Relief Position No. 6 working Friday through Tuesday with rest days Wednesday and Thursday. Relief position No. 6 embraces the following positions.

T-2017 Sub Yard, Lancaster Yard, Fort Worth

T-236 East City Yard, Fort Worth

T-1908 East City Yard, Fort Worth

Mr. Young's seniority date is February 1, 1942. Position T-2389 is regularly assigned to perform service in Carrier's West City Yard while Relief Position No. 6 is regularly assigned to perform service in Carrier's East City Yard, and Lancaster Sub Yard, approximately three-fourths of a mile and two miles apart.

In that case the Brotherhood conceded from the beginning that we did not have to call both men, on the holiday, and argued merely that we called the wrong one. But in the present case, the Brotherhood contends that Young and the claimant should both have been required to come on the holiday, Young to do some things and Kelly to remake this lost switch list, when the undisputed evidence shows that there was not enough work to keep two men busy for the guaranteed time, and no need for but one man. This is not a claim that we called the wrong man, but that we used the wrong man for a particular detail of service, and that we should have called two men, on this holiday.

This contention is in conflict with Mr. Harrison's testimony under oath, with the findings of Emergency Board 106, with the Awards of this Board, and with the accepted and established practice on the property. This claim is not only without support; as a claim it is without precedent, so far as we know, and is entirely unconscionable. It should by all means, be summarily denied. The Carrier does not request a hearing.

All known relevant argumentative facts and documentary evidence are included herein. All data submitted in support of Carrier's position has been presented to the employees or duly authorized representatives thereof and made a part of the particular question in dispute.

OPINION OF BOARD: The facts concerning this claim are not substantially disputed. Claimant was regularly assigned to Yard Clerk position T-2389, West City Yard, Fort Worth, Texas, hours 8:00 A. M. to 4:00 P. M., Monday through Friday, rest days Saturday and Sunday. W. L. Young, a regular relief yard clerk, occupied Position No. 6, East City Yard and Lancaster Sub-Yard, also at Fort Worth, assigned hours 7:00 A. M. to 3:00 P. M., Friday through Tuesday, rest days Wednesday and Thursday. These positions and their occupants were covered by the Agreement. Both positions were assigned in the same seniority district and the occupants were listed on the same seniority roster.

Labor Day, September 5, 1955, fell on a regular work day of both Claimant's and Young's regular work week assignments. Carrier blanked Claimant's position and worked Young's position on that holiday. About 11:00 A. M. that day, it was discovered that the switching list prepared by the third trick Yard Clerk was missing. Young was directed to prepare such list for use at the West City Yard. This work was ordinarily performed by the Claimant during his regular work week.

Petitioner contends that the preparation of the switching list by Young for use at the West City Yard on the holiday mentioned violated Rule 30 (f) of the Agreement which states that:

"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 employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe assigned that class of work."

We are not persuaded that, on the facts, this Rule supports the claim. The Rule specifies the condition that the required work occur "on a day which is not a part of any assignment" and permits the performance of the work "by the regular employe assigned that class of work". The record establishes that the preparation of the switching list was done on a holiday which was a

part of Young's assignment and within the hours thereof, and that such work was within the class of work assigned to him as a regular employee. Neither the agreement nor the fact that this work was ordinarily performed by the Claimant during his regular work week demonstrate that it belonged exclusively to him. See Awards 5922, 6077, 7954. The record does not suggest that Claimant's position was blanked on the holiday so that Young could prepare the switching list. Under these circumstances, the Rule does not substantiate the claim. See Awards 7137, 8003, 8198, 8872.

The difference in the yards and their geographical separation at the same location are alone insufficient to alter the result. The work was in the same class and craft. The positions and their occupants were in the same seniority district and the occupants were on the same seniority roster. See Awards 8003, 8198, 8278.

The determination here is consistent with Decision No. 2 of the Forty-Hour Week Committee which includes the statement that "Wherever the words 'the regular employee' are used in this paragraph, they shall mean the regular employee entitled to the work under the existing agreement". As we have observed, Rule 30 (f) permits the work referred to therein to be performed "by the regular employee assigned that class of work".

Awards 5388, 5465, 5837, 5972, 6306, 7089, 7134, 8344 and 8563, cited in support of the claim, are not applicable. In those cases, the Work On Unassigned Days rules did not contain the phrase "assigned that class of work" after the words "the regular employee". These Awards are also inapplicable for additional reasons. But to state those reasons would only protract this opinion unnecessarily.

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 30th day of June, 1960