

Award No. 9557

Docket No. CL-9010

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the carrier violated the Clerks' Agreement:

1. When on July 24, 1954, it removed on the rest days, and Holidays of the Clerk-Cashier at Cookeville, Tennessee, the work of handling mail, freight, cash transactions and other duties on such days from the Scope and Operation of The Clerks' Agreements and assigned such work to the Operator-Clerk.
2. That Mr. James R. Brewer be paid 5 hours and 20 minutes at the overtime rate for rest days and Holidays of his assignment as long as the Operator-Clerk continues to perform the clerical work at Cookeville, Tennessee.

EMPLOYES' STATEMENT OF FACTS: By Bulletin and Instruction of the Carrier in July 1954, work coming within the Scope of our Agreement was removed and assigned to Operator—Clerk at Cookeville, Tennessee. As a direct result of this action the Clerk Cashier Mr. James R. Brewer, was relieved of these duties on his rest days and Holidays.

Consequently on August 20, 1954 Mr. Brewer made Claim as follows in his letter to Mr. C. M. Smith, Agent at Cookeville, Tennessee.

Cookeville, Tennessee.
August 20, 1954

Mr. C. M. Smith,
Agent-Tennessee Central Railway Co.
Cookeville, Tennessee.

Dear Sir:

Please accept this letter as my claim for 5 hours and twenty (20) minutes pay for each of the days listed below.

Operator-Clerks has existed since the operator-clerk positions were first established on the railroad and has never been bargained away. It was, in fact, carefully preserved when its agreement with Clerical Employees was negotiated in Article 1(f), Exceptions, reading:

"1(f) Exceptions. — This agreement does not apply to employees engaged in classes of service which are now included, or are properly to be included, in agreements reached with other organizations; or to those in the police department; or to those paid \$30.00 per month or less for limited or special service which requires only a portion of their working time." (Emphasis ours).

The current agreement with Telegraphers became effective May 1, 1924 and was, therefore, in existence, along with all the conditions and practices attaching thereto, including the unrestricted performance of clerical work by operator-clerks, when the agreement became effective with Clerical Employees on September 15, 1938. Prior to the negotiation of the latter mentioned agreement with Clerical Employees on September 15, 1938, that craft of Employees had not been covered by an agreement since shortly after the end of Federal control of railroads.

Your Board has recognized the right of Carriers to fill out the time of Telegraphers by requiring them to perform clerical work so often that it should have long since ceased to have been an issue. As was stated in your Award No. 7322, with Referee Edward F. Carter:

"This rule has become so embedded in the holdings of this Board that a departure from it would produce a chaotic condition in the work of this Board."

Carrier submits further that a deviation from that rule would have an even more disastrous effect upon the efficiency, orderly and economical conduct of transportation by rail throughout the Nation.

In consideration of the foregoing, Carrier respectfully requests that the claim be denied.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering in detail their ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the Petitioner in relation to such issues.

OPINION OF BOARD: Claimant was a Cashier at Cookeville, Tennessee at and prior to the time covered by this dispute. His work week was Monday to Friday, with Saturday and Sunday as rest days.

It is undisputed that during his regular work-week he was regularly assigned to handle the mail here in dispute. Consequently, he was entitled to be called to perform such work on the Saturdays in dispute in accordance with the third sentence of Rule 3½ (i). The record reveals that Claimant was called to perform the mail handling on Saturdays prior to July 24, 1954, and compensated on a call basis.

There is no evidence of record that any of the disputed work was performed by the telegrapher on Holidays or Sundays.

Therefore, claim is sustained for each Saturday that the telegrapher performed any mail handling on Saturdays between July 24, 1954 and November 21, 1954. Claim for Holidays and Sundays 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 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 contract was violated to the extent indicated in the Opinion.

AWARD

Claims sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of September 1960.