

Award No. 9757
Docket No. CL-9020

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, 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:*

1. Carrier violated the Clerks' Rules Agreement and Memorandum of Agreement No. 9 at Sioux City, Iowa, when on July 4, 1955 it assigned work regularly assigned to and performed by clerical employees to an employee not covered by the Clerks' Agreement.

2. Carrier shall compensate Employee Billy C. Bell for five hours and twenty minutes (5'20") at the penalty rate of pay applicable to his position for July 4, 1955.

EMPLOYEES' STATEMENT OF FACTS: Employee Billy C. Bell has a clerical and non-clerical seniority date in Seniority District No. 41 of September 3, 1947. He is the regular occupant of Position No. 45, Yard Clerk, West Yards at Sioux City, Iowa. His assigned hours are from 11:59 PM to 8:59 A.M. with one hour for lunch; Thursday through Monday with assigned rest days of Tuesday and Wednesday; rate of pay \$13.958 per day.

On Monday, July 4, 1955, (a holiday) Train No. 63 arrived at Sioux City from Manilla at 5:30 P.M. There was no yard clerk on duty on arrival of Train No. 63 and the Yardmaster on duty, in lieu of calling a yard clerk to perform the work, stamped and sorted the bills from Train No. 63.

Stamping and sorting waybills from trains are duties regularly assigned to and performed daily by yard clerks.

This claim has been handled with each succeeding Carrier Officer up to and including the Assistant to Vice President, who is the highest designated Carrier Officer to whom appeals can be made, and declined by each in turn. Conference has been held thereon and no settlement reached.

POSITION OF EMPLOYEES: There is an Agreement between the parties bearing effective date of September 1, 1949. There is also a Memorandum of Agreement which is identified as Memorandum of Agreement No. 9.

Rules 1(e), 32(f) and (g) and 34(d) of the Rules Agreement read in whole or in part as follows:

the Agreement. Many awards, among which are Awards 3825, 3877, 4025, 4866 and others, lend support to that contention.

The Employees respectfully request their claim be sustained.

It is hereby affirmed that all data submitted in support of claimant's position has been submitted in substance to the Carrier and made a part of this claim.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: Claimant Bell is the regularly assigned occupant of Position 45, Yard Clerk, West Yards, Sioux City, Iowa, assigned hours: 11:59 p.m. to 8:59 a.m. with assigned rest days of Tuesday and Wednesday. This is the only yard clerk assigned at West Yard.

On Monday, July 4, 1955, Train 63 arrived West Yard at 5:30 p.m. The yardmaster stamped and sorted the bills for this incoming train consuming approximately 20 minutes in doing so.

Train 63 is operated only when there is sufficient business to warrant. This train, when operated, arrives West Yard all the way from 12 Noon to 5:30 p.m. No yard clerk is assigned or on duty in West Yard at the time No. 63 arrives nor is a yard clerk required in connection with the arrival of that train. During the month of June this train was operated on only 7 days and during the month of July it was operated on only 12 days.

The claim is based on the contention that this work should not have been performed by the yardmaster but that the yard clerk should have been called to perform such work, even though a yard clerk is not assigned or on duty at the time No. 63 arrives, whenever that train is operated, and even though the yardmaster at West Yard throughout the years has, from time to time, performed work in connection with the stamping and sorting of waybills. In this regard there is attached as Carrier's Exhibit "A" copy of statement made by Yardmaster H. W. Preston September 26, 1956 in which he indicates the same clerical force was on duty on the July 4th holiday as on any other day and that the yard clerk was not deprived of any earnings by reason of the yardmaster stamping and sorting the waybills after No. 63 arrived when he had nothing else to do.

There can be no reason whatsoever why a yard clerk should have been called on the holiday to sort and stamp waybills for No. 63, particularly when considering the manner in which the train is operated into West Yard and the fact that at no time is a yard clerk assigned and on duty at the time that train arrives.

There can be no basis for this claim and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced)

OPINION OF BOARD: This claim is based on the allegation that Carrier violated existing agreements when on July 4, 1955, at Sioux City Iowa, it assigned work regularly appertaining to and performed by clerical employees to an employe not covered by the Clerks' Agreement.

Employe Bell is the Yard Clerk, West Yards, Sioux City, Iowa, with hours from 11:59 P.M. to 8:59 A.M., Thursday through Monday, rest days Tuesday and Wednesday.

On Monday, July 4, 1955, a holiday, Train 63 arrived at 5:30 P.M. when no yard clerk was on duty and the Yardmaster stamped and sorted the waybills, consuming twenty minutes in doing so.

On the day in question Mr. Bell worked nine hours at overtime from 11:59 P.M. to 8:59 A.M. without a break for a meal. He also received holiday pay at regular time.

Bell was the only yard clerk at West Yards. Employes presented Exhibit D, an advertisement dated May 7, 1956, by the Carrier to fill another position as yard clerk but the Carrier then offered Exhibit B, its first advertisement for the additional yard clerk which position was established October 17, 1955, over three months after July 4, 1955, the date with which we are concerned.

Carrier asserts (but we do not find supporting evidence) that No. 63 is only operated when there is sufficient business to warrant, and arrives any time from 12:00 noon to 5:30 P.M., and that the train operated only seven days in June and twelve days in July of 1955. However, this evidence is hardly essential to determination of the case.

We do know that No. 63 arrived about 5:30 P.M. on the day in question and that there was no yard clerk on duty; we also appreciate that it was the Yardmaster's duty on arrival of the train to make disposition of the shipments, whether they were carload or less than carload, and in accordance with other information available to him. For this information he would necessarily refer to the waybills so that it was perfectly natural that he stamped and sorted the waybills, consuming twenty minutes.

Claimants are frank in admitting that "Most employes from President down perform clerical work of some kind" but contend that the stamping and sorting of waybills would not be the duty of a Yardmaster. Under ordinary circumstances they may be entirely correct, but the circumstances here are unusual, particularly when there is, or was at the time in question, only one yard clerk working one shift who could not possibly be present when all the trains arrived at different times during a twenty-four hour period; therefore the necessity for the Yardmaster when No. 63 arrived to do work which might normally be referred to as clerical in nature but under the facts presented here was incidental to his duty as Yardmaster.

The burden is on the Employe to prove the claim and this has not been done. (Award 7338-Cluster and 7426-Cluster.)

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 Employe involved in this dispute are respectively Carrier and Employe 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 Agreements were not violated by Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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