

Award No. 9944
Docket No. CL-8794

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, 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 and continues to violate the Clerks' current Agreement when it requires and permits Agent O. O. Stires and Relief Agent to perform work on Saturdays which is regularly assigned to and performed by General Clerk G. E. Goza, Monday through Friday each week at Blytheville, Arkansas.

(2) That Mr. G. E. Goza and his successors, if any, be paid for eight hours at one and one-half times their regular rate of pay for each of the following Saturdays: November 13, 20, 27 and December 4, 11, 18, 1954, and January 1, 8, 15, 22 and 29, 1955, and like amount for each subsequent date violation occurs, until corrected.

NOTE: Reparation due to be determined by a joint check of Carrier's payroll and other records.

EMPLOYEES' STATEMENT OF FACTS: Mr. G. E. Goza is regularly assigned to the position of General Clerk, 5:30 A. M., to 2:30 P. M., Monday through Friday, Saturday and Sunday off, no relief, Blytheville, Arkansas. Briefly the duties, as per Division Superintendent J. L. Humphrey's Advertisement No. 75 of October 26, 1954, are: handling freight claims, check yard and handle demurrage, interchange, prepare switch lists and wheel reports.

In performing these duties Monday through Friday, Mr. Goza is required to make an industry check, that is, check all industry tracks, make a switch list for the Dodger to work by, check and wheel Local #390, make interchange report of cars received from and delivered to connecting line, and other related work in connection with handling of cars in and out of industries and trains in and out of Blytheville. There is no regular assigned relief clerk assigned to do this work on Saturdays or Sundays, yet the Dodger and Local #390 operates six days per week, Monday through Saturday.

On the dates in Item 2, Statement of Claim, Agent O. O. Stires, and Relief Agent C. R. Cooper, performed the duties of Goza's position, coming down earlier than their regular assigned hours of 8:00 A. M., to 5:00 P. M. Carrier has required the Agents to report for work at 6:00 A. M., on Saturday.

In conclusion the Carrier repeats that the claim clearly is not supported by the rules and should be denied.

All data herein has been presented to representatives of the Employees.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: At the outset we are confronted with Carrier's contention that the claim is barred unless Petitioner's Ex Parte Submission was filed with the Board on, or before, March 6, 1956. This Division has consistently rejected similar pleas. See Award 9246.

We now turn to the merits.

Claimant was assigned to a newly created position of General Clerk, Monday through Friday, rest days Saturdays and Sunday, hours of service 5:30 A. M. to 2:30 P. M., on November 8, 1954. His assigned duties were "Handling freight claims, check yard and handle demurrage, interchange, prepare switch lists and wheel reports." He claims that he should have been used on Saturdays to perform such work in preference to the Agent.

Carrier states, without refutation, that the Agent is called out on Saturdays to supervise the operations at Blytheville, Arkansas, and that he performed the work in dispute six days per week prior and subsequent to the establishment of the clerical position. Under such circumstances, the Employees have failed to prove that Claimant was exclusively assigned to the claimed work during his regular work week, which is necessary in proving a violation of Rule 32-8. Therefore, claim will be 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 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 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 26th day of May 1961.