

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, 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 at Jonesboro, Arkansas, when it instructed and required Cashier M. T. Wathen to perform work on Assistant Cashier M. C. Murphy's position February 22, 1956, a holiday, and denied Mr. Murphy his right to perform the work.

(2) That Assistant Cashier M. G. Murphy be paid for eight (8) hours time at one and one-half times his regular rate of pay for February 22, 1956, a holiday.

EMPLOYEES' STATEMENT OF FACTS: Mr. M. C. Murphy is regularly assigned to the position of Assistant Cashier, 8:00 A. M. to 5:00 P. M., Jonesboro, Arkansas. A part of his regular assigned duties Monday through Friday, are: Breaking down and figuring divisions on SWT freight bills covering freight transferred to the Frisco Transportation Company and Bradsher Truck Lines; writing up SWT Accounting Forms 260, 261 and 267; writing up Cotton Belt Cash Book and balancing cash; lining up SWT Manifest Form 225; making up Statement of Freight Bills due—from the General Electric Company, Jonesboro, Arkansas; checking in SWT drivers.

Rule 35-2 of Supplemental Agreement dated July 22, 1949, reads:

"Nothing in this agreement shall be construed to permit the reduction of working days of regularly assigned employees below five (5) per week, except this number may be reduced in a week in which one of the seven holidays specified in Rule 33-2 occurs within the five days constituting the work week to the extent of such holiday."

Thus, positions not requiring seven day service, etc., such as Assistant Cashier M. C. Murphy's position, are worked only when the service of such position is needed on holidays.

under a practice of rotating such work. Claim was based on claimant being the senior of three inspectors. It was held that the rule relating to work on unassigned days applied, and that while the rule provided for use of regular employe, it did not provide for using the senior regular employe, and that such rule did not supersede a practice of rotating time work among the regular employes.

Award 22, Special Board of Adjustment No. 170, E. M. Sharpe, Chairman, denied claim of four yard clerks account assignments not worked on a holiday—the only force worked being Chief Yard Clerk and a Yard Clerk on each shift. The Board found that the work in yard office was interchangeable and was performed regularly or frequently by any of the clerks and held:

“Under Rule 43 the Carrier may reduce an employe's work days where a holiday occurs within an employe's work week. We are of the opinion that the Carrier was within its rights in reducing the labor force on the day in question.”

The facts show that the claim is not supported by the rules, and the Carrier respectfully submits that the claim should be denied.

All data herein has been handled with representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Assistant Cashier at Jonesboro freight station of the Carrier, filled his own regularly assigned position Tuesdays through Fridays, and that of Cashier on Mondays when he received the Cashier's rate of pay. The Cashier's days of work were Tuesday through Saturdays.

Claimant was ordered not to report for work on Tuesday, February 22, 1956, a specified holiday. Petitioner asserted that on that day the Cashier performed certain duties assigned to and performed by Claimant as a part of the latter's regular assigned duties, and that he consumed 4½ hours in so doing. Petitioner maintained that this violated Decision No. 2 of the Forty Hour Week Committee which provided in part:

“Where work is required to be performed on a holiday which is not a part of any assignment the regular employee shall be used.”

Carrier maintained that on the day in question only one of the two employes was required; and that the disputed work regularly was performed by either of them and was not exclusively that of the Assistant Cashier. Carrier maintained further that Decision No. 2, pertaining in fact to the question as to when extra, unassigned, or furloughed employes might be used instead of the regular employe, was not relevant, and that it clearly had the right not to use the Assistant Cashier on the holiday, under Rule 35-2 of the Agreement between the parties, as follows:

“35.2. Nothing in this agreement shall be construed to permit the reduction of working days of regularly assigned employes below six (6) per week, except this number may be reduced in a week in which one of the seven holidays specified in Rule 33 occurs, to the extent of such holiday.”

The duties here in question were listed by Petitioner as follows: breaking down the figuring divisions on SWT Freight Bills covering freight transferred

to the Frisco Transportation Company and Bradsher Truck Lines; writing up SWT Accounting Forms 260, 261 and 267; writing up Cotton Belt Cash Book and balancing cash; lining up SWT Manifest Form 225; checking in money and bills from the SWT Truck Drivers; and making up statement of freight bills due—from the General Electric Company, Jonesboro, Arkansas.

The record, including brief descriptions of the duties for the two positions prepared in 1946, clearly exhibits that their work overlapped and was interchangeable; and that the Cashier performed all necessary work alone on Saturdays and the Assistant Cashier did likewise on Mondays. The record does not support the assertion that the disputed work performed on February 22, 1956 belonged exclusively to the Assistant Cashier, nor does it appear that the Cashier was in need of assistance on that day.

The Board concludes that Claimant was not entitled to preference as "the regular employee" on the date in question, that the Carrier did not violate the Agreement by ordering him not to report for work that day, and that the claim must 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1962.