

Award No. 11541

Docket No. CL-11212

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, 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 on a holiday, Monday, September 2, 1957, at Jonesboro, Arkansas, when it permitted and allowed an employe of the Southwestern Transportation Company to enter its premises, use its office machine and warehouse facilities, and receive and bill for forwarding, 2872 pounds of LCL freight.

(2) That Mr. L. D. Ball, Claim Clerk, Jonesboro, Arkansas Freight Office, be paid for eight hours at one and one-half times his regular rate of pay for Monday, September 2, 1957. This to be in addition to the "Holiday Pay" already paid him under the provisions of Article II, Section 1, of the August 21, 1954 Agreement, for same date.

EMPLOYEES' STATEMENT OF FACTS: Mr. L. D. Ball, whose Group 1 seniority dates from February 4, 1942, is the regular occupant of Claim Clerk position, Jonesboro, Arkansas, Monday through Friday, with Saturday and Sunday rest days. The duties of which, as per Division Superintendent Humphreys' Advertisement No. 76 of October 24, 1954, are:

"* * * handling claim matters, OS&D's, perform billing for Cotton Belt and SWT Co., handling cotton bills-of-lading, record of number of bills-of-lading issued." (Emphasis ours).

Monday, September 2, 1957, was one of the seven holidays referred to in Rules 32-3, 33, 35-2 and Article II of the Chicago Agreement of August 21, 1954, and none of Carrier's employes were notified or required to report for work. For all intent and purposes the office and warehouse were closed to business that day. However, an SWT Company employee, one not covered by the Agreement, did open the warehouse and office on Monday, September 2, 1957, and received and billed, for forwarding, 2872 pounds of LTL freight from the General Electric Company, Jonesboro, Arkansas, to A. M. I. Incorporated, Grand Rapids, Michigan.

The Employees refer to certain awards in support of their claim as follows:

Award 1273 (Referee Tipton) was a dispute of The Order of Railroad Telegraphers involving discontinuance of call on Sundays and holidays for telegrapher at an intermediate station meeting a passenger train to handle mail, express, and baggage and instead train service employees on the passenger train were required to do this work at the intermediate station. Claim was made to restore the work to telegrapher and pay for time lost. Claim was sustained.

Circumstances of this award bear no similarity to those of the present case and obviously provides no support for employees' claim.

Award 3425 (Referee Blake) relates to dispute of clerks where Carrier discontinued a call on Sundays and holidays for clerk handling baggage to and from passenger trains and assigned the work on these days only to employe covered by telegraphers' agreement, the balance of the week the clerk continued to handle. Claim was made to restore the work to clerks and pay for time lost. Claim was sustained. The circumstances of this award are entirely different from those of the present case and the decision plainly does not support position of the Employees.

Award 5973 (Referee Messmore) concerns dispute of employees of Railway Express Agency, Inc., when Carrier discontinued on Sundays express messenger on one of its passenger trains, alleging discontinuance of express service on that train, yet continued to handle express and required or permitted shippers to load their own express shipments into baggage cars. Claim was made for restoration of express messenger on the passenger train schedule and pay for time lost. Claim was sustained. Nothing in this award bears any similarity to the circumstances or facts involved in the present case of handling SWT business at Jonesboro.

Award 7135 (Referee Carter) was dispute of Clerks' Organization relating to alleged improper rest day assignment of a position working seven days a week. Claim was dismissed because of the unreasonable delay in taking appeal to the Board. This award is related in no way to the present claim and quotation from the award as shown in General Chairman Straubinger's letter March 24, 1958 was not found in the award.

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the agreement rules and should be denied in its entirety.

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

(Exhibits not reproduced).

OPINION OF BOARD: After studying the record and the argumentation presented by the parties and in their behalf, we conclude that the entire transaction under discussion was handled for and by the Southwestern Transportation Company, a separate legal entity, in the operation of its business. This being true, the work in question was not covered by the Agreement between the Carrier and the petitioning Organization.

Since the claim must be denied upon this ground, we reach no other issues.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 24th day of June 1963.