

Award No. 12350
Docket No. CL-12248

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4861) that:

(1) The Carrier violated rules of the current Clerks' Agreement on October 3, 1959 and continues the violation by:

(a) Its failure to establish a regular relief assignment to perform the work of Janitor Foreman (Custodian) Passenger Department of the Carrier, Union Station, on the rest days of the incumbent, Garrett J. Thomas, and;

(b) Its failure to notify or assign Janitor Foreman (Custodian) Garrett J. Thomas to perform work attaching to his position on his rest days, and;

(c) By requiring through direction or otherwise Janitor Willie Carroll to perform in whole or in part the work of the Janitor Foreman (Custodian) on the rest days of that position.

(2) The Carrier shall pay Janitor Foreman (Custodian) Garrett J. Thomas one day's pay at time and one-half rate of his position for each rest day occurring from October 3, 1959, except such days he may not have been available account of vacation, sick or other leave of absence, until such time as the violation is corrected, and, further:

(3) The Carrier shall pay Janitor Willie Carroll one day at pro rata rate of his position for each Saturday and Sunday when he was required by direction or otherwise to perform the work of Janitor Foreman (Custodian) Garrett J. Thomas for the period October 3, 1959, until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The cleaning of the Union Station, Kansas City, Missouri, is performed by a force of approximately 40 em-

the admitted use of Assistant Foreman and others to perform the work of Assistant General Foreman on the latter's rest days. Mr. Carroll is simply not performing the work of Mr. Thomas on the latter's rest days. He is merely carrying out instructions given him by Mr. Thomas.

Furthermore, in Award 8776, the matter was in dispute from the inception of the forty-hour week.⁷ The record, in that case, also showed that relief work for the position of Assistant General Foreman had been performed by others in the past. Here no relief has even been considered necessary for the Janitor Foreman and the whole matter is now raised over ten years after the inception of the forty-hour week rules.

Neither the rules or the cited Award supports the Organization's claim.

V.

Without prejudice to any of our positions as stated above, we note the following exception to the claim itself:

1. Its scope in seeking pay for every rest day of Thomas without showing that the matters forming the basis of the claim occurred on every rest day.
2. The monetary penalty sought—a double penalty, pay for both Carroll and Thomas—the latter at time and one-half rate.

We submit however, that the claim is entirely without merit, and should be decided without the necessity of considering the above two points.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the opinion of this Board that the Agreement has not been violated.

In the Union Station at Kansas City Terminal, Janitor Foreman Thomas supervises all janitorial services. This requires supervising the three shifts of janitors. His regular work hours are from 10:30 P. M. to 7:00 A. M. on weekdays with rest days on Saturdays and Sundays. Another employe, Janitor Willie Carroll, performs janitor duties with a crew that works the 3:30 to 12:00 Midnight shift. Carroll's rest days are on Tuesday and Wednesday. It is admitted that Janitor Foreman Thomas leaves notes, addressed to Janitor Carroll, instructing him and the crew with which he works, as to their duties on Saturday and Sunday, the days when Thomas is not present at any time during the shift.

Employees contend that Carroll is required to perform supervisory duties which should be performed by Thomas on an overtime basis. However, examination of the record reveals no duties performed by Carroll which require a discretionary or supervisory capacity. On Saturday and Sunday Carroll merely performs his regular duties or performs other duties specifically assigned to him by Thomas in detail. He does sometimes serve the function of relaying these instructions from Thomas to the other employes on Carroll's shift, but his responsibility apparently ends at that point.

⁷See claim in that Award.

Carrier relevantly points to the fact that Foreman Thomas has supervisory duties over all three shifts each day and that he is not personally present during at least 16 hours of each day. Further, Employees do not contend that Thomas' personal presence is necessary on these two weekday shifts or deny that work is there performed without his personal presence.

Whether or not Carroll's position should be upgraded to the position of lead janitor is not a matter before this Board and no decision in respect thereto would be proper in these proceedings.

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

It is the opinion of the Board that there has been no violation of 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 25th day of March 1964.