

Award No. 13137
Docket No. CL-12341

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHEASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4889):

(1) That Carrier violated the Clerks' current Agreement at Waco, Texas, on the Labor Day Holiday, September 7, 1959, when it failed to call and use Claimants for work normally performed by them as a part of their assigned duties during their regular assigned hours and necessarily required on that day.

(2) That each of the following named Claimants be compensated, in addition to that already paid them for September 7, 1959, for a minimum of eight hours at the time and one-half rate of their respective assignments:

A. C. Cloud — Car Clerk
W. M. Dossett — Assistant Demurrage and OS&D Clerk
O. B. Marrs — Rate and Bill Clerk
J. R. Barron — Bill Clerk
E. E. Sargent — Comptometer-Phone Operator Clerk.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. C. Cloud, whose Group 1 seniority dates from August 13, 1936, is the regular occupant of a Car Clerk position, 8:00 A. M.-5:00 P. M., Monday through Friday, with Saturday and Sunday rest days, and his regularly assigned duties include that of making a yard check of cars placed at industries, and on other tracks, for unloading and/or loading.

Mr. W. M. Dossett, whose Group 1 seniority dates from September 29, 1937, is the regular occupant of an Assistant Demurrage and OS&D Clerk position, 8:00 A. M.-5:00 P. M., Monday through Friday, with Saturday and Sunday rest days, and his regularly assigned duties include that of making inspections of Stop-Cars, stopped at Waco for partial unloading or loading, after they have been released by the stop-over consignee for forwarding.

Mr. O. B. Marrs, whose Group 1 seniority dates from October 12, 1946, is the regular occupant of a Rate and Bill Clerk position, 2:00 P. M.-10:00 P. M., Monday through Friday, with Saturday and Sunday rest days, and his regularly assigned duties include that of rating freight tendered for shipment.

Award No. 25, Special Board No. 194 (Hubert Wyckoff, Chairman) was a dispute where Carrier assigned a bill clerk, who was the only employe making request, to work on a holiday. A notice had been posted that only one employe would be on duty and the senior employe making application would be used. By mutual interpretation of the parties their overtime rule covered holiday work and was as follows:

"In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is primarily necessary shall be given preference."

The claim was in favor of switching clerk and was sustained on basis that Carrier was obligated to make proper work assignments according to the agreement, and that claimant's work of handling car orders and switch orders was the particular class of service which customers would most likely be expected to require. Hence it was held that the class of work to which claimant was regularly assigned was the class of work for which the holiday overtime was "primarily necessary".

That Award was controlled by a special agreed interpretation of the rules of the parties there. No similar conditions prevailed in the case here and the Award could not be said to be controlling in the instant claim.

In conclusion the Carrier respectfully submits that the facts show plainly that there is no basis for the claim and requests that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The Claimants in this case are all regular incumbents of five-day positions, assigned Monday through Friday, with rest days on Saturday and Sunday. None of these employes were notified to work on Monday, September 7, 1959, the Labor Day Holiday. The Carrier was not obligated to call them for work, if there was no work to be performed on their assigned positions that day.

Mr. DuBose is the regular occupant of a Relief Clerk position which relieves the Rate Clerk, Thursday and Friday; the Demurrage Clerk, Saturday; and the Chief Clerk, Sunday and Monday. On the day in question, DuBose was to perform duties as Relief Chief Clerk.

There is evidence in the record that on this day, in addition to his regularly assigned duties, DuBose performed work of the nature ordinarily performed by each of the Claimants. None of this work is performed by the Chief Clerk during his regular assignment. Neither is it required to be performed by the Relief Chief Clerk on ordinary Mondays.

Rule 32-8 provides:

"32-8. Work on Unassigned Days. Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

Decision number two of the Forty Hour Week Committee, says, in part:

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

It is clear that if there had been no work to be performed on these assigned positions that day, the Carrier would not have been obligated to call the Claimants. However, since work on their positions was required, we hold that the Carrier should have called the Claimants and that it was error for the Relief Chief Clerk to perform the work in question.

There is some conflict about the claim for compensation for eight hours at the time and one-half rate. Even though some properties base holiday pay on the minimum of two hours, Rule 32-3 of the applicable agreement provides for compensation as claimed.

Having found that Claimants should have been called to perform the work in question, we must now hold that the claim be sustained as presented.

We would direct your attention to Awards 5837 and 8563.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.