

Award No. 13284

Docket No. CL-13363

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5129) that:

(1) Carrier violated the Clerks' Agreement when it reestablished Position 3-A, Roundhouse Foreman's Clerk at Kansas City, Missouri, effective February 14, 1961, as a five (5) day assignment, Monday through Friday, rest days Saturday and Sunday, and thereafter required or permitted the Roundhouse Foreman, Mr. J. Kozar, an employe not covered by the Clerks' Agreement to perform on Saturdays and Sundays the work formerly performed by clerks on such days.

(2) Carrier be directed by appropriate order to restore the clerical duties required on Saturdays and Sundays to clerical employes under the provisions of the Clerks' Agreement.

(3) Extra Clerk James Brockemeier be paid eight (8) hours at the pro rata rate of position No. 3-A, Roundhouse Foreman's Clerk, for February 25, 26, April 1, 15, 16, 22, 23, 29 and 30, 1961.

Extra Clerk G. C. Lovejoy be paid eight (8) hours at the pro rata rate of position No. 3-A, Roundhouse Foreman's Clerk, for March 4, 5, 11 and 12, 1961.

Extra Clerk Harold Houchin be paid eight (8) hours at the pro rata rate of position No. 3-A, Roundhouse Foreman's Clerk, for March 18, 19, 25, 26, April 2, 8 and 9, 1961.

EMPLOYEES' STATEMENT OF FACTS: Position No. 3-A, Roundhouse Foreman's Clerk, prior to its abolishment on August 9, 1960, was bulletined in accordance with Rule 17, of the Clerical Agreement, and assigned to clerical employes fully covered by the Clerks' Agreement, hours of assignment 7:00 A. M. to 3:00 P. M., Wednesday through Sunday, rest days Monday and Tuesday, with regular relief assigned to work the position on the rest days or Monday and Tuesday.

the exclusive right to the work of signing the foreman's name approving a report for which the foreman is responsible.

The diesel turn-over book is a current record that shows engine number, time of arrival, time inspected and supplied, and time dispatched. The keeping of this record is identical to the duties and responsibilities of foremen, and plainly is not a function reserved exclusively to clerks.

The Committee, in their handling of this case on the property, made the statement in their letter of May 4, 1961, that:

"On Saturday and Sunday the work of this position which consists of calling and assigning engineers and firemen which at this time represents about 45 men, the calling of road men for the different turns will be about 16 men without taking into consideration men off sick and not reporting for work, there are at present about 12 switch engines which requires about 24 more men, three hostlers around the clock and various other duties which have to do with calling and assigning these men."

It appears that the Committee, when making the above quoted statement, referred to round-the-clock operations, the full work load of which did not fall on Saturday and Sunday day shift which is made the subject of this dispute. It is significant that a part of the round-the-clock work load fell on the night shift where it has always been customary for the night foreman to call engine crews and maintain the call board without the assistance of a clerk.

The assigned hours for the day enginehouse foreman on Saturdays and Sundays were 7:00 A.M. to 12 o'clock noon and 12:30 P.M. to 3:30 P.M. During his tour of duty on Saturdays and Sundays at the time of this claim there were three (3) to four (4) trains for which engine crews had to be called. It was necessary for the day foreman to call enginemen for switching and hostler service on Saturdays and Sundays only when vacancies occurred due to regular men laying off and extra men being needed. Thus, it is clear that the calling of crews by the day foreman on Saturdays and Sundays, did not entail the volume of work contended by the Committee.

The management of this Company has the responsibility of operating its property in such a manner as to produce the greatest possible efficiency and economy, and the maintenance of a clerical position on Saturdays and Sundays to perform less than two (2) hours of work on those days, which is incidental to the duties and responsibilities of an enginehouse foreman, cannot be justified.

Attention is directed to this Division's Award No. 9461 involving a dispute between the parties hereto.

The Committee's claim is not justified by facts and circumstances, nor is it supported by schedule rules. The claim should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Involved in this case is the work of calling crews at the North Kansas City, Missouri, roundhouse on Saturdays and Sundays between 8:00 A.M. and 4:30 P.M. According to the Employees, because this work is performed as part of the regularly assigned duties of a Roundhouse Foreman's Clerk position on the day shift, Mondays through Fridays, it should

be assigned only to employees covered under the Clerks' Agreement on the day shift on Saturdays and Sundays. Employees claim that Rule 12, Section 2(g) was violated by Carrier's assignment of the involved work to the Roundhouse Foreman, who is covered by an Agreement with another Organization.

For the Employees effectively to invoke Rule 12, Section 2(g), however, it is necessary for them to prove that the involved work, which was only a fraction of the work of the Roundhouse Clerk position, is work which is reserved to the Clerks under the Agreement. Awards Nos. 9032, 9461 and 2 of Special Board of Adjustment No. 350, all between the same parties as here, all make clear that just the fact that work is performed regularly as part of a position covered under the Clerks' Agreement does not necessarily reserve such work to the Clerks; according to those decisions, where such work is historically performed regularly as an incidental part of the duties of positions covered by Agreements with other crafts, as well as by the Clerks, it does not belong exclusively to the Clerks. In such cases, the particular facts in each case will be determinative.

The Scope Rule in this Agreement does not explicitly reserve the involved work for the Employees; and the evidence does not show that the involved work was so reserved by custom or practice. On the contrary, undisputed evidence in the record establishes that the work of calling crews at this location has regularly been part of the incidental duties of Roundhouse Foreman as well as a fraction of the duties of Roundhouse Foreman's Clerks; the record even establishes that Roundhouse Foreman had regularly performed the involved work on the day shift all week long during the period between the abolition and re-establishment of Roundhouse Foreman's Clerk. Thus, the work even with its definition narrowed by time and place is established to be of that borderline kind which may, under this Agreement, be assigned to members of crafts other than the Clerks, without breaching the Agreement.

In the letter from Local Chairman Dolan to Superintendent Wills (Employees' Exhibit No. 1) we find:

"We are again asking that position No. 3A Roundhouse Clerk be re-established as it was on August 8th, 1960, and the clerical work be performed by assigning a clerk to this position seven days per week, Sunday through Saturday 7:00 A. M. to 3:00 P. M. Monday and Tuesday being the assigned day of rest on this position."

The record does not show that any grievance was filed against the abolition of the seven day position in August of 1960, nor against the assignment of the remaining duties of the position in the interim until the re-establishment of the position as a five day position. It appears that the need for the involved work had lessened to the extent that the Roundhouse Foreman could manage to handle the day shift portion required on Saturdays and Sundays incidentally to his main duties, but that the amount had not reduced enough so that the Foreman could manage the work needed incidentally to his other duties on Mondays through Fridays. Rule 12, Section 2(g) may not be used to require Carrier to establish a seven day position to get the performance of the less than two hours per day of work here needed on the sixth and seventh days, where the duties are only a fractional part of the duties of the Clerk's position and are such that they are not reserved by the Agreement to the Employees.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties of 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.