

Award No. 13982
Docket No. CL-14554

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5455) that:

(a) The Carrier violated the rules of the Clerks' Agreement when it failed and refused to call Claim and Industry Clerk, Mr. P. E. Parmenter, to perform his normal and regularly assigned duties on his rest days, Saturdays, September 22 and 29, and Sundays, September 9, 30 and October 7, 1962. And

(b) The Carrier further violated the rules of the Clerks' Agreement on the dates covered by the claim, when it required Rate and Bill Clerk, Mr. John H. Wood, to leave the duties he performed daily in order to perform duties of the Claim and Industry Clerk on the dates involved in this dispute.

(c) Mr. P. E. Parmenter shall now be allowed the actual time involved, at the rate of time and one-half, but not less than a minimum call on each day listed in Claim (a) above.

EMPLOYEES' STATEMENT OF FACTS: Claimant P. E. Parmenter is the regular occupant of the five-day position of Claim and Industry Clerk at Stockton Yard, California, with assigned hours of 9:00 A. M. to 1:00 P. M. and 2:00 P. M. to 6:00 P. M. and rest days of Saturday and Sunday. The duties of this position include the signing of bills of lading at various industries, the sealing of cars and issuing of switch lists for the movement of cars covered by the bills of lading.

Mr. John H. Wood occupying the seven-day position of Rate and Bill Clerk is assigned to work 8:00 A. M. to 5:00 P. M. with a meal period of one hour and rest days of Tuesday and Wednesday.

On September 17, 1962, Agent H. K. Reese issued instructions (Employes' Exhibit "1") to Mr. L. Daniel, Assistant Chief Clerk at Stockton Yard, with hours of 8:00 A. M. to 4:00 P. M., and his relief, Mr. B. N. Gage, that "Making industry service calls and track check is assigned to 8:00 A. M.-5:00 P. M. Rate & Bill Clerk on Saturdays and Sundays. He is to be used for this work rather than calling a (Claim and Industry) Clerk out to do it." (Emphasis ours.)

(b) The disputed work was performed by the Rate-Bill Clerk during his regular hours as a part of his assigned duties, and he did not suspend work during his regular hours to absorb overtime;

(c) Neither the Assistant Chief Clerk, Rate-Bill Clerk nor the Interchange Clerk, to whom the disputed work was assigned on the dates involved, required assistance in making industry service calls on those dates by calling an off-duty employee.

Carrier submits that the rules of the Agreement between the parties have not been violated by Carrier as contended by the Organization; that Carrier was not required to call claimant on the dates involved to perform the disputed work; that he is not entitled to the additional compensation claimed, and strongly urges the claim be denied.

OPINION OF BOARD: The record presented contains an unrefuted assertion that during the handling of this case on the property, Petitioner's representative, in correspondence and conference with Carrier's highest designated officer, refused to cite the specific provisions of the Agreement which he deemed violated, preferring instead to not cite these portions so that he would "be free to adopt whatever position and to make whatever argument he desired at a later time".

It is indeed unfortunate that at this late date and because of an erroneous assumption on the part of Petitioner's representative on the property we are precluded from proceeding to a disposition of this claim on its merits. We are of the opinion, and so find, that the failure to indicate to Carrier's highest officer all of the rules alleged to be violated, when viewed in the light of the attending reason given for that failure and when coupled with Petitioner's subsequent submission to this Board of rules allegedly violated which are different from those discussed on the property, constitutes a willful failure on petitioner's part to follow the requirements of the Railway Labor Act, in which case we are without jurisdiction to decide this claim on its merits but must dismiss it.

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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1965.