

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5381) that:

(1) Carrier violated the Clerks' current Agreement at North Little Rock, Arkansas, when it failed to use the proper employe to perform duties assigned to the position of Bill Clerk on February 10 and 22, 1962.

(2) Bill Clerk R. C. Harris be compensated for four hours' pay at the time and one-half rate for Saturday, February 10, 1962, and for eight hours' pay at the time and one-half rate for the holiday, February 22, 1962.

EMPLOYES' STATEMENT OF FACTS: Mr. R. C. Harris is regularly assigned to position of Bill Clerk at North Little Rock, with Saturday and Sunday rest days. On Saturday, February 10, 1962, the Chief Clerk billed 31 cars, ordered them from the Rock Island and Missouri Pacific, made switch orders, etc. All of these duties are regularly assigned to the position of Bill Clerk during his work week, Monday through Friday. The Chief Clerk worked four hours performing the Bill Clerk's work on February 10th from 1:30 P.M. to 5:30 P.M. The Chief Clerk has rest days of Saturday and Sunday.

On the holiday, February 22, 1962, the Chief Clerk made 23 local waybills and 10 foreign waybills, ordered cars from the Missouri Pacific and Rock Island, made switch orders, etc. All of these duties are regularly assigned to the position of Bill Clerk during his regular work week, Monday through Friday.

Claim was originated by Bill Clerk R. C. Harris in the form of an overtime slip for the payroll period of February, 1962, which was declined by Mr. H. L. Clark, Agent, North Little Rock, Arkansas, on February 23, 1962. (Employees' Exhibits A-1 and A-2.)

This claim was then appealed to Mr. J. R. Holden, General Superintendent, Pine Bluff, Arkansas, on February 26, 1962, by Division Chairman B. M. Johnson, Pine Bluff, and was denied by Mr. Holden on March 7, 1962. (Employees' Exhibits B-1 and B-2.)

ment dated July 22, 1949, and Memorandum of Agreements dated August 5, 1950 and September 1, 1955, relating to the 40-Hour Week, copies of which are on file with the Board.

Exhibits 1 to 5, inclusive, are attached hereto and made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees contend that the Carrier violated Rule 32-8 of the Agreement and Decision No. 2 of the Forty Hour Week Committee when it permitted the Chief Clerk to perform work on Saturday, February 10, 1962, and on the holiday, February 22, 1962. Rule 32-8 reads:

"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 employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

Decision No. 2 of the Forty Hour Week Committee says:

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

There is no question that the Chief Clerk was assigned and did work normally done by the Bill Clerk on the dates noted in the claim. But, the fact is that the Chief Clerk had been so assigned and did this work on Saturdays since 1949, and has done this work occasionally on holidays.

With the inauguration of the 40-hour work week on September 1, 1949, the Chief Clerk and the senior Bill Clerk were assigned staggered work weeks. Beginning on November 12, 1949, the Chief Clerk and the Bill Clerk alternated the Saturday work assignment. This arrangement continued even after the work assignment on Saturday was reduced to four (4) hours. After this claim was presented on February 23, 1962, the Chief Clerk was instructed to work the four (4) hours on Saturday, and the alternating arrangement was stopped.

There is no denial that the Chief Clerk had performed all necessary clerical work, including billing, on the alternating Saturdays prior to February 23, 1962. This is not incidental or assistance work as defined in Award 5972, but a part of the regular Saturday work assignment.

The record does not support Employees' position that billing is work reserved exclusively to Bill Clerks. On the contrary, the record shows that the Chief Clerk has performed such work on Saturdays and holidays since 1949.

Since the Chief Clerk is the senior of the two Clerks, he is entitled to priority for overtime work on Saturdays and holidays, in accordance with Rule 32-8. Decision No. 2 of the Forty Hour Week Committee does not hold otherwise.

There is no need to consider the procedural issue raised by the Carrier.

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 Carrier did not violate 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 18th day of November 1966.