

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5344) that:

(a) The Bureau violated rules of the current Clerks' Agreement and Memorandum of Agreement dated October 29, 1958 when on Sunday, September 4, 1960 and Monday, September 5, 1960 (Labor Day) it failed to utilize Mr. T. L. Brock and Mr. R. C. Ward to perform work to which they were entitled and, instead, utilized Mr. J. Estes and Mr. M. L. Taylor.

(b) Mr. T. L. Brock and Mr. R. C. Ward shall each be compensated for 10½ hours at the rate of time and one-half for September 4, 1960 and for 9 hours at time and one-half for September 5, 1960.

EMPLOYEES' STATEMENT OF FACTS: This dispute arises from Bureau's unilateral action in utilizing two employees, Servicemen J. Estes and M. L. Taylor, for overtime service amounting to 10½ hours for each on Sunday, September 4, 1960, an unassigned day, and for similar overtime service amounting to 9 hours for each on Monday, September 5, 1960 a recognized holiday.

Mr. Estes was a regularly assigned Serviceman who was assigned at the Coffield Warehouse in Houston, Texas during the work weeks preceding and following the claim dates here involved. Mr. Taylor was likewise a regularly assigned Serviceman but he was assigned at the Houston Public Elevator in Houston during the work weeks preceding and following the claim dates.

Prior to August 26, 1960, Claimant Brock and Ward held regular positions of Servicemen at Houston, Texas. Their positions were abolished on August 26, 1960 and were reinstated effective September 1, 1960. The positions to which Claimants were regularly assigned, namely Position No. 110 and Position No. 105, respectively, had Monday through Friday as assigned work days and Saturday and Sunday as assigned rest days. We have attached copies of the bulletins and assignments to Position No. 110 and Position No. 105, which Claimants held during the period involved in this dispute, as Employees' Exhibits Nos. 1A, 1B, 9A and 9B. During the weeks preceding and following the

perform work interchangeably at all locations within the Grain Door Market (Houston, Texas). (See Bureau's Exhibits 29, 30, 31, 32, 33, 33-A and 33-B.)

All work performed by the Servicemen in the Grain Door Department at Houston, Texas, is identical in scope with none of the work being the exclusive duty of any one particular position, but rather is the type of work reserved to the Servicemen as a class. The Servicemen are not assigned to any elevator or mill or truck, but instead, perform work at all locations throughout the Houston area on a day-by-day basis, working at different locations daily. (See Bureau's Exhibits 34 and 35.)

The work involved at the start of the day on September 4 and 5, 1960, was working on the truck, such as reclaiming lumber, loading lumber, caulking, paper, nails and other materials at the Houston Public Elevator where the Grain Door Department maintains a supply shanty and is not work reserved for any particular Serviceman position. Furthermore, all Servicemen work on the truck when needed. (See Bureau's Exhibits 36 and 37.)

The Memorandum Agreement dated October 29, 1958, between the Brotherhood of Railway Clerks and this Bureau, only pertains to assigned (by bulletin) Leadmen and Servicemen who are stationed at a specific location, such as an elevator, mill or working on the truck and does not pertain to unassigned Servicemen. (See Bureau's Exhibits 38 and 39.)

While negotiations and correspondence pertaining to the assigning of Servicemen to specific locations or zones are still being conducted, no assigned locations or zones have, as yet, been agreed upon and this subject is still being handled currently between the Bureau and the Brotherhood of Railway Clerks, as witnessed by the General Chairman's letter of April 2, 1963, showing the list of subjects still being carried as open file to be discussed in conference with the Bureau and your attention is directed to the emphasized subject, BofRC File 95-11, Bureau File C-70-28, date of Bureau's last letter October 10, 1960, District-General Grain Door. (See Bureau's Exhibit No. 40.)

While a number of these subjects were discussed in conference with the General Chairman in the Bureau General Office in Chicago, Illinois, on April 16, 17, 18 and 19, 1963, the subject of assigning Servicemen to a specific location was never discussed.

(Exhibits not reproduced.)

OPINION OF BOARD: On Sunday, September 4, 1960 and on Labor Day, Monday, September 5, 1960 the Carrier utilized Servicemen J. Estes and M. L. Taylor for overtime service at the United Industries Elevator.

Claimants Brock and Ward, both Servicemen in Houston had had their positions abolished on August 26, 1960 and reinstated September 1, 1960.

The Organization argues that Brock and Ward had prior rights to Sunday and Holiday work at the United Industries Elevator to which they were regularly assigned. It asserts that the October 29, 1958 Memorandum of Agreement reserved Sunday work to those following the leadman: "Next by the senior serviceman assigned to the Elevator or Mill where work is required." Additionally it cites awards of this Board embracing the principle that the employee performing work Monday through Friday is entitled to overtime thereon on Sundays and Holidays.

The Carrier asserts that the seven Servicemen positions are unassigned; that they all perform the same work throughout the Houston area working daily at different locations; that the October 29, 1958 Memorandum of Agreement referred only to Leadmen and Servicemen stationed at a specific location; and that no specific assignment agreement between the parties has yet been negotiated.

The parties' October 29, 1958 Memorandum of Agreement provides for work on unassigned days being assigned to "the senior serviceman assigned to the elevator or mill where work is required."

Similarly Rule 34 is concerned that "employees regularly assigned to positions on which overtime is required, will be worked."

The evidence is clear that although the Claimant had been assigned to the particular location in dispute, there were other employees in the same classification, with greater seniority, who also did the same work at the same location at various times. Absent any agreement showing that employees have been assigned to a specific location, it stands to reason that all employees of the same classification could readily be assigned to a number of locations and be considered as regular employees at that location. Indeed in the period around the disputed weekend, several other Servicemen had worked repeatedly at the disputed location.

This Board has held that failure by certain regular employees to show an exclusive practice of performing such Sunday and Holiday work, opens the available work to the senior employees in that classification who have also performed it regularly. (Award 9987 Weston, Award 10947 Dorsey.)

It must be concluded that the Claimants have not convincingly demonstrated that they were the sole employees doing this work on weekdays and thus the sole employees entitled to do it on Sundays and Holidays. (Award 11227 Sheridan.)

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1966.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.