



Award No. 15375
Docket No. CL-15866

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5833) that:

1. The Carrier violated the Clerks' Agreement when it failed to use Mr. W. D. Wright, Chief Yard Clerk No. 1639, to perform the duties assigned his position on September 7, 1964, holiday.

2. Mr. W. D. Wright shall now be paid eight hours at time and one-half rate of Chief Yard Clerk position for September 7, 1964.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. D. Wright is assigned to position of Chief Yard Clerk, which is a seven day position, rest days Thursday and Friday, and such rest days filled by regularly assigned Swing Clerk 2887-R.

The Chief Yard Clerk at Corpus Christi, among other duties, exclusively performs the duties of marking up and writing up the crew book. Employees' Exhibits Nos. 1 and 2.

Prior to the above claim date, Chief Yard Clerk position has previously been working on holidays; however, on Labor Day, September 7, 1964, Claimant was not permitted to work his assignment, and the duties of his position that were required to be performed were performed by Record Clerk 2007, Mr. Ramond Rovira, Jr. The Employees attach as Exhibit No. 3, copy of such duties performed by Mr. Rovira on September 7, 1964 and which would have been performed by Chief Clerk Wright had he properly been permitted to work on the holiday.

The instant dispute has been handled in accordance with the procedural requirement of governing provisions of current Agreement between the parties up to and including the highest officer designated for that purpose, and upon being finally denied, is properly before your Honorable Board for adjudication. Employees' Exhibits Nos. 4, 5, 6, 7, 8, 9, 10 and 11.

tracks, weigh cars, handle crew book during all hours of Chief Yard Clerk. Call crews and all other duties necessary during hours of assignment for this position.

3. The above seven-day positions were protected on rest days by a swing job. It will be noted that the duties of the Car Record Clerk, which is the highest rated position of the three, includes "All other duties necessary to and for the continuance of service." The duties of the Chief Clerk include "Handle crew book for yard and road crews. . . ." The duties of the Line Desk Clerk includes "Call crews and all other duties necessary during hours of assignment for this position."

4. On Labor Day, September 7, 1964, the position of Chief Yard Clerk was blanked on the holiday. The duties necessary to and for the continuance of service on the holiday were performed by the clerks on duty. Such work included making the necessary entries in the crew book to enable the 6:00 A.M. Yard Clerk to call crews the following day. The trainmaster estimates that the Car Record Clerk spent about 35 minutes performing such work on the date of claim.

5. The Employees filed and progressed a claim on behalf of the Chief Yard Clerk for eight hours at the time and one-half rate account not called to perform the 35 minutes' work making the necessary entries in the crew book.

OPINION OF BOARD: Mr. W. D. Wright, occupant of Chief Yard Clerk Position No. 1639, claims Carrier violated the Agreement, specifically, Rule 37 (c-6) when it failed to use him to perform work of handling the crew book on the Labor Day holiday, September 7, 1964. He maintains that this work he performs during his regular workweek, and since it was unassigned work which fell on a holiday, it belongs to him, the regular employee, rather than to Record Clerk No. 2007 who performed the work.

Carrier contends that it properly assigned the work to the Car Record Clerk, the highest rated clerk in the same seniority district. It points out that in the bulletin describing the duties of this position the concluding statement is:

"All other duties necessary to and for the continuance of service."

On the basis of this provision, it asserts that making up and writing up the crew book to enable the Yard Clerk to call crews the following day is within the bulletin's description of the duties of the Car Record Clerk. Furthermore, it maintains that the Car Record Clerk on his regular assignment has the right to perform this work which is not an exclusive function of the Chief Clerk.

The record shows that the bulletin advertising the position of Chief Yard Clerk includes the duty of "handle crew book for Yard and Road Crews." However, among the duties listed in the advertising bulletin for the Car Record Clerk, there is no mention of handling the crew book. Although the bulletin describing the duties of the Car Record Clerk concludes with the words "All other duties necessary to and for the continuance of service", this statement is not a basis for the Car Record Clerk to assume all duties essential to insure the continuance of service. To interpret this statement otherwise would permit the Car Record Clerk to assume responsibilities not within the contemplation of his position. The work in question was not part

of the assignment of the Car Record Clerk, nor did Carrier regularly assign this duty to him. On the other hand, the record discloses that the Chief Yard Clerk customarily handled the call book during his workweek as part of his regular assignment. Furthermore, he was called to perform this work when it was required on holidays. Where work is required by Carrier to be performed on a holiday which is not part of a regular assignment, the regular employee is entitled to the work as provided for in Rule 37 (c-6).

For the reasons stated, the Agreement was violated, and the claim is sustained. Since the record shows Claimant Wright was called regularly on Sundays and holidays, compensation is allowed at time and one-half rate of the Chief Clerk position for September 7, 1964 in accordance with Rule 43 (b).

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 in accordance with above Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1967.