



Award No. 17028

Docket No. CL-17079

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**

**TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL
RAILROAD OF NEW ORLEANS**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6263) that:

(a) The Carrier violated the rules of the Clerks' Agreement when on April 10, 1966, it failed to call Thomas Garcia on Sunday to perform work which is regularly assigned to his position of Chief Yard Clerk, Westwego, Louisiana, and improperly permitted Yard Clerk, Avondale, Louisiana, R. A. Lanassa to perform claimant's duties.

(b) Mr. Garcia shall be paid 8 hours at the time and one-half rate for April 10, 1966.

EMPLOYEES' STATEMENT OF FACTS: Mr. Garcia is assigned to the 5-day position of Chief Yard Clerk at Westwego, Louisiana, with assigned hours 6 A. M. to 2 P. M., rest days Saturday and Sunday. The Chief Yard Clerk is the only assigned clerical position at Westwego and among other duties is exclusively assigned the work of weighing cars during his work week Monday through Friday. Regular relief is not provided for the Chief Clerk position on the assigned rest days thereof, therefore, there is no clerk on duty at Westwego on Saturdays and Sundays.

Mr. R. S. Lanassa is assigned to a seven-day Yard Clerk position at Avondale, Louisiana, which is three miles from Westwego. His assigned hours are 7 A. M. to 3 P. M. with rest days Tuesday and Wednesday and such rest days are filled by a regular assigned relief position.

Under date of April 10, 1966 at 9 A. M., Mr. Lanassa was required to suspend work on his own assignment at Avondale and sent to Westwego on the switch engine to weigh twelve (12) cars.

Dear Sir:

Reference to your letter of September 6, 1966, File TP-MP 209, appealing claim of Chief Yard Clerk Thomas Garcia, Westwego, Louisiana for 8 hours at the time and one-half rate of pay April 10, 1966, because clerk at Avondale, Louisiana being required to perform service at Westwego during claimant's rest day.

This claim results from the performance of a small amount of work at Westwego by the clerk at Avondale, because the track scale in Avondale Yard became inoperative and the cars had to be weighed at Westwego before forwarding.

There is nothing in the Agreement that prohibits the utilization of employees in this manner where the work is all of the same nature, on the same seniority district. The Yard Clerk at Avondale may perform any duties at Westwego that the clerks are permitted to do under the Agreement. Certainly there is nothing in the Agreement which sets up boundaries within a seniority district which an employee must work, thereby restricting the employees to a particular location.

In view of the foregoing, claim is without merit or rule support and is respectfully declined.

Yours truly,

/s/ O. B. Sayers"

8. There is a companion claim filed by the Clerks' Organization in behalf of Clerk Lanassa, who went from Avondale to Westwego to perform this small amount of work, which claim is covered by the Employees' file GL-6262 and which has also been submitted to this Board under date of April 7, 1967. A separate ex parte brief will be submitted for the latter case.

OPINION OF BOARD: On April 10, 1966, the scale at Avondale was out of adjustment; the cars to be weighed were switched to Westwego some 3½ miles away, where they could be weighed by the scale there. Claimant Garcia, a Chief Yard Clerk, was the only assigned clerical employee at Westwego and was off that day on his assigned rest day; on his regular work days he performs all of the weighing required at Westwego. On this day, Carrier required the Yard Clerk who normally would have weighed the cars at Avondale to go to Westwego during his regular hours to weigh the cars there. Brotherhood claims that Carrier violated the Agreement, particularly Rule 10(f), in failing to assign the work to Claimant in the absence of any eligible extra or unassigned employee; Rule 10(f) reads:

"(f) Work on Unassigned Days. 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 forty (40) hours of work that week; in all other cases by the regular employee."

There was no dispute that Claimant was the regular employee whose work normally included the weighing of cars at Westwego. Under the circumstances here, the assignment of such work on his rest day to anyone other than an eligible extra or unassigned employee violated Rule 10(f).

Brotherhood claims that Carrier should be required to pay Claimant eight hours at time and one-half. We find that Claimant should have been called for the Sunday work involved.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1969.