



Award Number 17619

Docket Number CL-17986

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**PENN CENTRAL COMPANY—SOUTHERN REGION
(Formerly New York Central Railroad—Southern District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6486) that:

- (1) The Carrier violated the Clerks' Agreement at Avon, Indiana, on New Year's Holiday, January 2, 1967, when it failed to call the employee regularly assigned to Job No. 106, Clerk-Auto Messenger, to perform the duties of his position which Carrier required to be performed.
- (2) Carrier shall now be required to compensate Mr. C. W. Dixon, incumbent of Job No. 106, an additional \$34.66 which represents time and one-half the basic straight time rate of Job No. 106.

EMPLOYEES' STATEMENT OF FACTS: There was an agreement in effect at the time the instant claim was instituted which became effective on July 22, 1922 and reprinted with revisions to January 5, 1951 which is on file with your Honorable Board and by reference thereto is made a part of this claim.

The Carrier maintained a position at Big Four Yard, Avon, Indiana, known as Job No. 106, Clerk-Auto Messenger. Assigned hours were 7:00 A.M. to 3:00 P.M., with assigned rest days of Saturday and Sunday. One of the primary duties of Job No. 106 was the operation of a Carrier-owned vehicle to transport train crew members between various points within the Big Four Yard.

Inasmuch as January 1, 1967 fell on Sunday, the following day, January 2, 1967, was observed nationally as New Year's Holiday. As is the general practice, on this day the Carrier reduced the working force to a great degree. Among the employees notified not to work was the claimant in this dispute, Mr. C. W. Dixon, who was paid \$23.11 representing eight hours at pro rata rate of his regularly assigned position, Job No. 106.

On January 2, 1967, Carrier did not reduce the volume of its train operation at Big Four Yard. The following trains arrived at the yard during the 7:00 A.M. to 3:00 P.M. shift: MPX-2, P&E-X, Duane Turn, CBN-2, SV-5, SLC-1, KA-2, and NY-6. The crews of these trains as well as a freight crew "deadheading" on Passenger Train #341, were transported from the arrival point to the Yard Office in the Carrier-owned vehicle driven either

be transported between points in Big Four Yard to achieve maximum benefits from the installation. Additionally, the "main-tracking" of trains (crew changes on the main lines with trains not "yarded") became more prevalent, adding to that particular phase of the necessary "messenger service".

Since a large number of its employees resided in Indianapolis the Carrier established, by contract with the Indianapolis Transit Company, regular scheduled bus service, reserved exclusively to its employees, between downtown Indianapolis and Big Four Yard. These vehicles were owned and operated by the Indianapolis Transit Company, and the service so provided was (and is) supplemented, as necessary, by the use of taxi service and by company owned or leased vehicles operated by various qualified employees, including fully excepted, non-agreement personnel.

Messenger service, Indianapolis Terminal, can best be described as the movement of bills and miscellaneous documents, material, and personnel between points within the Terminal.

Inasmuch as there was sufficient miscellaneous "messenger" service to justify the arrangement, the Carrier, by agreement with the Organization party hereto dated July 1, 1960, established positions identified as Clerk-Auto-Messengers. Copy of that Agreement is attached hereto as Carrier's Exhibit No. 1.

The incumbents of these positions are provided with Company owned or leased vehicles, and in addition to performing a limited amount of clerical service (the occasional checking of a track, etc.) are engaged in the overall messenger function.

Mr. C. W. Dixon, claimant in this case, held assignment to Job No. 106, Clerk-Auto-Messenger, Monday through Friday work week, hours of service 7:00 A.M.-3:00 P.M., no relief provided Saturday or Sunday, rate of compensation \$23.11 per day.

In 1967 New Year's Day, January 1st, fell on Sunday and was observed the following day, Monday, January 2nd. As is customary, the Carrier, on New Year's Day, operated only those trains which were absolutely necessary and curtailed to the fullest extent possible other functions to permit the maximum number of employees to observe the holiday. Claimant's assignment was one of those annulled, and he was paid eight hours, pro rata rate, Holiday Pay.

During the hours of claimant's assignment, 7:00 A.M.-3:00 P.M., train or engine crews in service on a total of nine trains, inbound or outbound, were transported between their trains and East End Yard Office, Big Four Yard, the established on and off duty point for road service employees, Indianapolis Terminal. Company leased vehicles, operated by full excepted, non-agreement, personnel were utilized to afford the necessary transportation.

Claim was presented, and progressed, on the basis that claimant should have been called for service on the holiday, January 2, 1967, to provide this transportation service. Rules 20 and 22 of the Schedule Agreement were cited in support of the claim—see General Chairman T. C. Burch's letter of July 17, 1967, copy attached hereto as Carrier's Exhibit No. 2.

(Exhibits Not Reproduced)

OPINION OF BOARD: Petitioner, a Clerk-Auto Messenger claims that Carrier violated the Agreement when it permitted Carrier's Road Foreman, M. Rigney and Trainmaster Jack Chester to transport train crews in Carrier-

owned vehicles on the holiday in question instead of calling petitioner whose duties consisted of transporting crew members between various points within the Big Four Yard at Avon, Indiana.

Petitioner contends that although Carrier has the right to reduce the work week of an employe to the extent of holidays occurring during the work week, this right evaporates whenever there is work to be performed on the position to be suspended; that Rule 16(j) of the Agreement requires that such work be performed by the regularly assigned employe; that Rule 22 of the Agreement provides that when work is performed on a holiday, the employe assigned should have been given a call under Rule 20 to perform the work; that the activities surrounding the transporting of crews belongs exclusively to the Clerk-Auto Messenger position at Avon, Indiana; that the title of Claimant's position is sufficient to establish his exclusive right to the duties of transporting crews at Big Four Yard in the absence of past history of the performance of such work by employes outside the Clerks' Agreement.

Carrier's defense to this claim is the Clerks' Organization does not have any exclusive right to the work involved herein; the Rules 20 and 22 become pertinent only after a showing of "exclusivity", which the Petitioner has failed to prove in this instance; that there was not sufficient work of the position in question to merit working it on said holiday.

We are confronted in this dispute with the "Work on Unassigned Days Rule", namely Rule 16(j) of the Agreement. We do not agree with Carrier's contention that the Organization must prove "exclusivity" to the work in question before Carrier can be found guilty of violating said Rule.

In applying said rule herein, we find that Claimant was the regular employe assigned the required work of transporting crew members on the holiday, a day which is not a part of any assignment. Therefore, Rule 16(j) compelled Carrier to call the regular employe, in this instance the Claimant, and thus we will sustain the claim. See Awards Nos. 8563, 13137, 7134.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1969.