

Award No. 18383
Docket No. CL-18633

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

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

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6756) that:

(1) The Carrier violated rules of the Clerks' Agreement when they did not call Clerk W. E. Kilpatrick to work the rest days of his five day assignment and on holiday. But, instead allowed others to perform work assigned to his position on these days.

(2) Clerk W. E. Kilpatrick be paid two (2) hours for August 31 and September 2, 1968; four (4) hours for September 8 and 14, 1968; and six (6) hours for September 7 and 15, 1968 at the punitive rate of his position.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. E. Kilpatrick, herein-after referred to as Claimant, holds clerical seniority on District 5, Savannah District, in which Savannah, Georgia, is located. Claimant is assigned to Messenger-Caller at Savannah Yard. (Employees' Exhibit "A" and "B")

Soon after the merger of the Seaboard Air Line Railroad Company and the Atlantic Coast Line Railroad Company, through an understanding reached between the Terminal Trainmaster and the District Chairman, the duty of calling train crews, which was assigned to Claimant, was moved to a similar position in the former Atlantic Coast Line Yard which was assigned to work seven days per week. Then, soon after the move was made the position in the former Atlantic Coast Line Yard was cut off and all its duties placed on the Claimant's position, which was assigned to work five days per week. With the cutting off of the position in the former Atlantic Coast Line Yard and placing its duties on the Claimant's position, brought about a need for calling crews on Saturday, Sunday and Holidays. But, instead of working the Claimant, who was assigned to perform this work Monday through Friday, other employees were required to perform the work on Saturday, Sunday and Holidays.

Under dates of March 25, 1969 and October 14, 1969, General Chairman J. L. Davenport, Jr. listed this claim for conference at his regularly scheduled conferences, commencing April 8, 1969 and October 21, 1969. This claim was discussed in both of these conferences and was not resolved.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is in effect an agreement between the Seaboard Coast Line Railroad Company and its employees represented by the Brotherhood of Railway, Airline and Steamship Clerks, bearing the effective date of January 1, 1968. Copy of that agreement and supplements thereto are on file with the Board and by references thereto are made a part of this submission.

On dates of claim Mr. Kilpatrick was assigned to the Porter-Caller's position at Savannah, Ga. This position is a five (5) day assignment and is assigned to work 6:30 A. M. to 3:30 P. M. Monday through Friday, rest days Saturday and Sunday. Copy of bulletin covering this position is attached as Carrier's Exhibit "A" and, as will be noted, sets forth the following principal and preponderant duties.

"Call crews when necessary, perform messenger service between various offices, filing and any other duties that may be assigned." Emphasis added.

Also assigned at Savannah Yard are Crew Dispatcher and Assistant Crew Dispatcher positions, working around the clock seven (7) days per week. Copy of a typical bulletin covering such positions is attached as Carrier's Exhibit "B" and, as will be noted, sets forth the following principal and preponderant duties:

"Handling all yard and mainline duties, dispatching duties and other related work and any other assigned duties." Emphasis added.

Because Porter-Caller Kilpatrick is in the vicinity of one or two crews during his work day, he is utilized to call these crews. On dates of claim, which involve rest days and one holiday, the first trick Crew Dispatcher and the Assistant Crew Dispatcher performed all of the crew calling as they normally do on such days. As result thereof, Porter-Caller Kilpatrick submitted claims as outlined in Statement of Claim alleging violation of current agreement Rule 20(f). The claims as presented were handled by the Organization up to and including Carrier's highest officer designated to handle such matters. Copy of all pertinent correspondence exchanged between the parties in the handling of the claim on the property is attached as Carrier's Exhibit "C".

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a Porter-Caller at Carrier's Savannah, Georgia yard assigned Monday through Friday, rest days Saturday and Sunday. The bulletin pertaining to Claimant's position describes his principal duties as follows:

"Call crews when necessary, perform messenger service between various offices, filing and other duties that may be assigned."

Claimant contends that Carrier violated Rule 20(f) of the Agreement when crew dispatchers were used to call crews on Saturdays, Sundays and holidays. Claimant maintains that the responsibility to call crews is attached to his position and that he should have been assigned this work on his rest days and holidays in preference to regular assigned employees working other positions. Rule 20(f) provides:

Rule 20 — Overtime and Calls

(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. (The employee who is regularly assigned to perform the work during his regular work week.)

It is clear that if the responsibility for calling crews rests with Claimant during his assigned days, he would be entitled to that work on rest days in preference to other regularly assigned employees. (There were no extra or unassigned employees available at the material times.)

Carrier asserts that it properly assigned the work in question to crew dispatchers since the calling of crews is an inherent part of their jobs. The bulletins of crew dispatchers describe their principal duties as follows:

“Handling all yard and mainline duties, dispatching duties and other related work and any other assigned duties.”

Carrier argues that this language is broad enough to include and does include crew calling as a necessary part of dispatching work.

Carrier also argues that the wording of the Porter-Caller's bulletin — “Call crews **when necessary**” — indicates that he is used to call crews only on a casual basis and when no one else is available to perform that function. We would point out that those words can also be interpreted to mean that the Porter-Caller shall call crews **whenever** crews must be called. Indeed, the fact that the title of the Porter-Caller's position contains the word “Caller” and that the reference to calling crews is listed first of all the duties of that position strongly suggests that the calling of crews is a far more prominent ingredient of the job than Carrier contends. In any event, the central issue remains as whether Claimant would have performed the work in question had it occurred during his assigned days.

The written submissions and supporting documentary evidence presented in this case leaves much to be desired. The parties could have and should have met the issue squarely and presented direct evidence of whether or not Claimant performs all necessary crew calling on his assigned days. They did not, however, so we must cull from the record what evidence there is on this subject and make logical inferences thereupon to determine what the parties intended as the assigned basic duties of the Porter-Caller's position.

The Carrier's Trainmaster in a letter to Claimant during the processing of this case characterized the duties of the crew dispatcher as including the

basic responsibility of contacting crews to insure on-time departure of trains. The Trainmaster wrote to Claimant in that letter that "... when you are not working or should you not be immediately available, even though on duty ..." the crew dispatcher retains the ultimate responsibility to contact the crews. This suggests to us that while crew dispatchers have the ultimate responsibility to ensure that train crews are notified of their assignments and departure times, when train crews must be personally contacted the Porter-Caller shall physically perform that function when he is on duty in preference to anyone else.

Carrier's Superintendent wrote during the appeal procedure herein that crew dispatchers call crews "... when the porter-caller was not available". Again, the inference is that when the porter-caller is on duty and available the assignment is to be made to him rather than a crew dispatcher.

We must conclude that if the assignments in question had been made during Claimant's regular hours, Claimant would have a right to those assignments. Accordingly, under Rule 20(f) such assignments must be made to Claimant when they occur on his rest days or on holidays if no extra or unassigned employe with less than forty hours' service is available.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated Rule 20(f).

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1971.