



Award No. 18621
Docket No. CL-18848

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6790) that:

1. Carrier violated the current agreement between the parties, effective March 1, 1954, and supplements thereto, when on Saturday, November 14 and Sunday November 15, 1968, Carrier failed to call Claimant to perform work regularly assigned to his position Monday to Friday work-week.

2. Mr. R. D. Coleman now be compensated eight (8) hours pay at the overtime rate of his position for Saturday, November 14 and for Sunday, November 15, 1968, and for each subsequent Saturday and Sunday on which this violation occurs until violation is corrected.

3. All other employees who may be adversely affected by this agreement violation shall likewise be fully compensated subsequent to November 14, 1968, to be determined by joint check of Carrier's payroll and other records.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. D. Coleman, Claimant listed in Item 2 in this case, is regularly assigned to position of Porter, at the Texas and Pacific Railway Company's Arlington, Texas Freight Station, assigned days Monday through Friday, rest days Saturday and Sunday, having attained this position through the exercise of his seniority.

The Carrier, by bulletin dated August 20, 1968, advertised a Relief Yard Clerk at the rate of \$25.10 per day, wherein the duties of **service yard engines and cabooses on Saturday and Sunday** (emphasis added). The Organization protested this assignment on the grounds that the Carrier was circumventing the Agreement by requiring a Group 1 employee to perform the rest day duties of a Group 2 employee.

8. The claim was progressed to the highest designated officer authorized to handle these matters, Mr. O. B. Sayers, Director of Labor Relations, who declined the claim as follows under date of August 14, 1969:

"August 14, 1969
D 304-145

Mr. T. W. Taggart, Jr.
General Chairman — Clerks
2826 E. Rosedale, Office 110
Fort Worth, Texas 76105

Dear Sir:

Please refer to your letter of June 25, 1969, file 1026, in which you appeal claim of R. D. Coleman for eight hours at the time and one-half rate for November 14 and 15, 1968, and for each subsequent Saturday and Sunday because claimant was not called to perform service at Arlington, Texas.

While the supplying of engines and cabooses may be work normally assigned to Group 2 positions, there is no reservation of work between Groups 1, 2 and 3. Rule 2 (a) provides that clerical workers (Group 1) are employees who regularly devote not less than four hours per day to writing, calculating, etc., which is evidence that such positions may be assigned other classes of work for the remainder of their assignment. The NOTE to Rule 2 further supports this fact.

In view of the fact there is nothing which prohibits assigning Group 2 or 3 work to Group 1 positions, claim is without merit and is respectfully declined.

Without waiving the position set forth above, it is also our position that the claim is barred by the time limit provisions of the agreement since the occurrence upon which the claim is based took place in August, 1968 (see your letter of August 27, 1968), and claim was not filed until January 4, 1969.

It is also noted that in conference on March 18, 1969 with Superintendent Converse, you amended the claim from eight hours per day to a two-hour call.

Yours truly,

/s/ O. B. Sayers"

OPINION OF BOARD: Claimant is regularly assigned to position of Porter, at the Texas and Pacific Railway Company's Arlington Texas Freight Station. Claimant is a Group 2 clerical employee assigned days Monday through Friday with Saturday and Sunday rest days.

Carrier issued bulletin dated August 20, 1968 advertising a Relief Yard Clerk (Group employee) wherein the duties consisted of, in part, "service yard engines and cabooses on Saturday and Sunday." The employees pro-

tested this assignment on the grounds that Carrier was circumventing the Agreement by requiring a Group 1 employee to perform the rest day duties of a Group 2 employee. It is uncontroverted that commencing with the assignment of this position, Carrier required Group 1 Yard Clerk to perform the duties of servicing yard engines and cabooses on Saturday and Sunday only. These duties are regularly performed by Claimant Monday through Friday. Claim was filed on behalf of Claimant on account he was not called to perform this work on Saturdays and Sundays.

Carrier, ab initio, raises a procedural issue, alleging that the claim is barred by the Time Limit Rule since the claim was not filed until January 4, 1969, while the date of the alleged violation is August, 1968. We disagree. The claim, in our opinion, is based on a continuing violation, and thus not barred by the Time Limit Rule. We shall proceed to the merits of the claim.

Rule 1 classifies the employees covered by the agreement into three groups. Group 1 consists of employees who regularly devote not less than four hours per day to specified clerical duties, while Group 2 consists of other office, station and storehouse employees, including Claimant.

It is well established by numerous Awards of the Third Division of the National Railroad Adjustment Board that the fact the employees under a Scope Rule such as that in the applicable agreement are divided into three groups for classification and maintenance of seniority rosters is no bar to assigning Group 2 work to Group 1 employees. (See Award Nos. 7167, 2011, 14050, and SBA No. 564, Award No. 17.) The Scope Rule in question is a general one. It merely classifies employees on the basis of preponderating work. Neither the Scope Rule nor any other Rule in the Agreement allocates any particular work to Group 2 employees. It does not give all clerical work to Group 1 and all non-clerical work to Group 2 and 3. Neither does the Agreement preclude Group 1 employees from performing non-clerical work, nor prevent Group 2 and 3 employees from performing clerical work. In the absence of a contractual prohibition, Carrier was within its rights in permitting Group 1 employees to perform Group 2 duties on the rest days of the Group 2 employee.

Nor is Rule 30 (f) (Work on Unassigned Days) applicable here since Saturday and Sunday were days which were part of the Yard Clerk's assignment.

Consequently, the Agreement was not violated.

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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1971.