

Award No. 18787
Docket No. CL-18953

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6813) that:

1. The Carrier violated the Rules of the Agreement extant between the parties when it failed to call Clerk P. J. Calcaterra for work performed on his position on March 22, 30, April 12, & 13, of 1969, these days being rest days of his position.

2. Mr. P. J. Calcaterra shall now be allowed a call for each day March 22, 30, April 12 & 13, 1969 that the violation occurred.

EMPLOYEES' STATEMENT OF FACTS: On the days in dispute, Mr. Calcaterra was regularly assigned to position of Chief Clerk, 8:00 A.M. to 5:00 P.M., Monday through Friday, with unassigned rest days on Saturday and Sunday. The position was a 5-day assignment.

Part of the assigned duties of Chief Clerk position are the handling of piggy-back outbound loads which includes making lists, handling waybills and various other items which pertain thereto. On Saturday, March 22, Sunday, March 30, Saturday, April 12 and Sunday, April 13, 1969, these duties were performed by Rate and Bill Clerk, Mr. C. Skinner.

Claims were filed with Agent H. K. Reese for one call for each day involved. (Employees' Exhibit "A"). These were declined by the Agent on May 15, 1969. (Employees' Exhibit "B"). Appeal was made to Superintendent J. C. Lusar on June 27 and declined on July 10, 1969. (Employees' Exhibits "C" & "D"). Final appeal was made to Manager of Personnel, Mr. W. A. Tussey, the highest officer of the Carrier authorized to handle such disputes, on September 4, 1969 (Employees' Exhibit "E"). Conference was held on October 14, 1969, without receiving a satisfactory settlement, and Mr. Tussey declined the claims on October 28, 1969. (Employees' Exhibit "F").

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Stockton, California located on Carrier's main line is served by five other rail carriers as well as by ocean-

Copy of the controlling agreement between Carrier and the Brotherhood of Railway Clerks, effective December 16, 1943, Revised September 16, 1965 is on file with the Third Division, National Railroad Adjustment Board and is hereby incorporated herein by reference. Also on file at your Board is the Agreement of March 19, 1949, otherwise known as the "Forty Hour Week Agreement" along with the Decisions of the Committee established by Article IV thereof, the provisions of which were made effective on this property September 1, 1949, which by this reference becomes a part of this dispute. Paragraph (h), Rule 20 of the Agreement between the parties is quoted below for the Board's ready reference.

"Rule 20 (h). 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 furloughed employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

(Exhibits not reproduced.)

OPINION OF BOARD: For many years prior to March 22, 1969, clerical work involved in piggy-back handling was performed by the Chief Clerk which was a seven day position. On Saturdays and Sundays the incumbent of the regular relief assignment performed the work. Subsequent to March 22, 1969, the Chief Clerk position was changed to a five day position and the work in question assigned to the seven day position of Rate and Bill Clerk. The employees involved herein are all of the same class and seniority district.

It is the contention of the Claimants that in assigning the work to the Rate and Bill Clerk position the Carrier violated Rule 20 (h) of the Agreement between the parties:

"Rule 20 (h) — 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 furloughed employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

We find nothing in the agreement restricting management's prerogative to assign the work in question to the Rate and Bill Clerk position.

The number of awards of this Board sanctioning the staggering of work-weeks is great. Award 10622 clearly set out the proper interpretation of the rights of the Carrier in cases like the one at bar:

"The determination of the number of employees needed to perform its work is the function of Management except as it has limited itself by Agreement. Relief assignments are only required to be made when there is work necessary to be done. When all work can be effectively performed by staggering of regularly assigned employees the necessity for relief assignments on rest days does not exist. In other words, we hold Carrier may, in accordance with its operational requirements, stagger the work week assignments so that the rest days of some will coincide with the work days of others and combine the work done, as was done in this case, and thus make it possible for the regular employee to do all the work necessary to have performed

on those days without the necessity of any relief, particularly, where as here, the employes were of the same class, performed the same type of work, receive the same pay and are carried on the same seniority roster."

This Award cited with approval in Award 16851. See also Award 6946 which states: "We have repeatedly held, and correctly we think, that the assignment of regular relief positions and of work on unassigned days is not a condition precedent to the staggering of work weeks." See also Award 12788.

Having found that the work was not improperly assigned to the Rate and Bill Clerk position and in concurrence with the many awards of this Board we hold that 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 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 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 22nd day of October 1971.