

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19403
Docket Number CL-17758

Gene T. Ritter, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Penn Central Company Southern Region
((Formerly New York Central Railroad - Southern District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6445)
that:

Claim No. 1. File: 2570

Carrier violated the Rules Agreement at Hillsboro, Illinois on July 2, 9, 16, 23, 30 and August 6, 1966, particularly Rules 1 - Scope, 16(j) and 20, when it assigned the work of checking yards, making switch lists for Local Train and related work normally, exclusively and historically performed by Mr. T. L. Truxell, Clerk, to Mr. Wayne Washburn, Relief Assistant Agent-Operator -- an employee not covered by the Clerks' Agreement.

Claim No. 2. File: 2589

Carrier violated the Rules Agreement at Hillsboro, Illinois on August 13, 20, 27, September 3, 10, 17 and 24, 1966, particularly Rules 1 - Scope, 16(j) and 20, when it assigned the work of checking yards, making switch lists for Local Train and related work normally, exclusively and historically performed by Mr. T. L. Truxell, Clerk, to Mr. Wayne Washburn, Relief Assistant Agent-Operator -- an employee not covered by the Clerks' Agreement.

Claim No. 3. File: 2595

Carrier violated the Rules Agreement at Hillsboro, Illinois, on October 1, 8, 15, 22, 29 and November 5, 1966, particularly Rules 1 - Scope, 16 (j) and 20, when it assigned the work of checking yards, making switch lists for Local Train and related work normally, exclusively and historically performed by Mr. T. L. Truxell, Clerk, to Mr. Wayne Washburn, Relief Assistant Agent-Operator -- an employee not covered by the Clerks' Agreement.

Claim No. 4. File: 2613

Carrier violated the Rules Agreement at Hillsboro, Illinois, on November 12, 19, 26, December 3, 10, 17 and 24, 1966, particularly Rules 1 - Scope, 16 (j) and 20, when it assigned the work of checking yards, making switch lists for Local Train and related work normally, exclusively and historically performed by Mr. T. L. Truxell, Clerk, to Mr. Wayne Washburn, Relief Assistant Agent-Operator -- an employee not covered by the Clerks' Agreement.

(1) Carrier shall now be required to compensate Mr. T. L. Truxell for a two-hour call at rate of \$22.734 per day under Rule 20 for each of the above dates.

(2) Carrier shall now be required to assign all of Claimant's work of checking yards, making switch lists and related work on his rest days to employees within the Clerks' Agreement and in accordance with the provisions of said Agreement.

OPINION OF BOARD: The four cases listed in the Statement of Claim have been condensed into one submission by mutual consent of both parties for the reason that all four cases consist of identical facts except for the dates. The Organization contends that prior to January, 1965, when Claimant was required to be off several weeks because of illness, Claimant performed the involved work including work required to be performed on his rest day, exclusively. The Organization further contends that while Claimant was off duty due to illness, Carrier assigned Claimant's work to a Relief Assistant Agent-Operator - an employee not covered by the Clerks' Agreement. The Organization further contends that upon Claimant's return from sick leave to active service, the work which was a part of his regular assignment 5 days per week and which Carrier still required to be performed on his rest days, had been taken away from his clerical position and given to a "Relief Assistant Agent-Operator" in order to give the latter a 5 day relief assignment. Carrier contends that this claim was filed on the basis of alleged protection under the terms of the February 7, 1965 Job Stabilization Agreement; that under Article VII, Section 1, this dispute should be referred to a Disputes Committee; and that this Board has no jurisdiction to hear this dispute. In the alternative, Carrier contends that employees represented by the Telegraphers' Organization and by the Clerks' Organization have performed the involved work at least three years prior to the instant claims without protest; and that under past practice, the involved work can not be designated as work belonging exclusively to Clerks.

From the record, it appears that this case concerns itself with the "Work on Unassigned Days" Rule. Contained in this record are various conflicting statements and allegations concerning the question of whether or not the Relief Assistant Agent-Operator performed the involved work as part of his normal duties during his regularly assigned work week, as well as on Claimant's rest days. The record contains no probative evidence supporting the naked allegations or self-serving correspondence on behalf of either party. Therefore, the Organization has failed in its burden of proving that the Relief Assistant Agent-Operator did not normally perform the involved work during his regular assignment. It must, therefore, be concluded that the involved work was being done by both the Claimant and the Relief Assistant-Agent-Operator during each of their regular assignments as part of their normal duties and that Carrier in this instance merely discontinued the calling of Claimant on his rest days, as Carrier had the right to do. See Award 19220 by this Referee.

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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 not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Kellen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.