

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21497
Docket Number CL-21488

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Port Terminal Railroad Association

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8115, that:

1. The Association violated the **Agreement between the parties at** Houston, Texas, **February 2, 1975**, when it called and used Head IBM **Programmer** C. E. Johnson instead of Mr. **C. J. Anderson** on an unassigned day to perform the work regularly assigned to and customarily performed by Mr. **C. J. Anderson** as the regular occupant of Machine Operator-Clerk Position No. 141.

2. The **Association, as** a result of this violation, shall **now** allow Mr. **C. J. Anderson** one day's pay at the time and one-half rate of Machine Operator-Clerk Position No. 141 for February 2, **1975**.

OPINION OF BOARD: The facts giving rise to the instant **claim are as** follows:
Claimant was the regularly assigned occupant of **Machine-** Operator-Clerk Position No. 141 in the General Office of the Port Terminal Railroad Association. He is assigned to work Monday through Friday with rest days Saturday and Sunday. There is no regular rest day relief assignment assigned on Saturday and Sunday. On Sunday, February 2, 1975 the Association used Mr. **C. J. Anderson**, the regular occupant of Position No. 141 in the General Office, to perform the work of preparing the End of Month Reports. Mr. Anderson was compensated 8 hours at the **overtime** rate for this service.

The instant claim involves the interpretation of Rule 11 (i), Work on Unassigned Days. It is the Organization's position that the work of preparing the End of Month Reports is work assigned to and normally performed by the Claimant as part of his regular five-day work week assignment. And inasmuch as there was no available extra or unassigned **employee** to perform the foregoing work on Saturday, February 2, 1975, the Organization argues that consistent with Rule 11 (i) Claimant should have been called **to** perform it. Carrier retorts **that** the work of preparing End of Month Reports has **not** been exclusively assigned to the Claimant; that **C. J. Anderson** was senior to the Claimant; and that pursuant to a local agreement, the senior **employee** on the "Willing Workers" list is called and used to fill vacancies when the extra board is exhausted, as was the case on the date of claim.

If, as the Carrier asserts, **C. J. Anderson** normally prepared End of Month Reports as part of his regular five-day work week assignment then the Association could properly use him to perform said work on a day which

is not part of any assignment. This Board has carefully reviewed the correspondence between the parties while the claim was handled on the property and nowhere therein is there evidence that Mr. Anderson has performed this work as part of his regular **assignment**. The Association did claim that Anderson can operate any **machine in** the I.B.M. Department, and that both his position and Claimant's position encompass the **same** principal duties. However, this falls far short of proving that Anderson normally prepared End of Month Reports as part of his regular assignment. There is simply **no** evidence in the record to support the Association's contention.

The record does evidence, however, that Claimant does indeed normally perform this work as part of his five-day work week assignment. It can no longer be questioned that Claimant is thereby entitled to this work when it is to be performed on a day which is not part of any **assignment** irrespective whether he performed this work to the exclusion of all other **employees**. (Cf., for example, Awards 12957, 19039 and 19439). Since there was no extra or unassigned **employee** available to **perform** the work of preparing End of Month Reports, and since this work was normally performed by the Claimant Monday through Friday, we hold that Rule 11 **(i)** required the Association to use Claimant for the work on Saturday, February 2, 1975. And **inasmuch** as the Association did not challenge the claim for compensation at the punitive rate while the claim was handled **on** the property, this Board is compelled to sustain the claim as it was submitted to us.

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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.