

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21820
Docket Number CL-21649

James F. Searce, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers, ,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8114) that:

1) Carrier violated the Clerks' Rules Agreement on January 26, February 2 and February 9, 1975, when it failed to utilize the **regular employe** to perform work required on the aforementioned **Sundays**, which **normally** performs five days per week.

2) Carrier shall now be required to compensate **employe** R. A. **Fountaine** for five hours 20 minutes (5'20") at the **penalty** rate of Position #2120 on January 26, February 2 and February 9, 1975.

OPINION OF BOARD: Claimant was classified as a **Reconsigning Clerk** holding position 2120 at the Carrier's Bensenville, Illinois, yard at the time of the incident leading to this dispute. His regularly assigned workdays were Monday through Friday with Saturdays and Sundays as **regularly** assigned rest days.

Since occupying this position in March of 1973 and up to January, 1975, it had been the practice of the Claimant to work **Sundays** (although the record does not specify that he worked each **Sunday**) at the request of **management**, for the purpose of **sending** out constructive **placement** notices. The basis for such work (**performed** at **premium** rate) was to permit the Claimant to do such work (**i.e., sending** out constructive placement notices) which could be done at **times** and under conditions not **directly** related to the **exigencies** of his **regular** work hours.

It is **unrefuted** that the Claimant, when necessary, **performed** the preparation and dispatching of constructive placement notices; it is **equally unrefuted** that **others** at the Carrier's facility did the same or similar work on an as-needed basis.

Beginning in January, 1975, the Carrier assigned the task of issuing constructive placement notices on Sundays to another employee (occupying position **0444**) within the craft, at a lesser rate of pay **and** at the straight-time rate. The employee's regular work location was separate from that of the Claimant, **although** apparently within the **same overall** facility. In order for this employee to perform this work on Sunday, he necessarily **came** to the **Claimant's work** location and work station. It was unrefuted, however, **that** this employee also issued constructive placement notices, when necessary, as part of his duties. Nothing was present in the record as to the regular work schedule of this employee but it seems apparent that it included Sunday as a regular **workday**, since the employee was working at a straight-time rate.

The Union contends that **a** reading of the appropriate Rule supports its claim:

"RULE 28 - 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 **40** hours of work that week; in **all** other cases by the regular **employee.**"

"Regular employee" in Rule 28- in this case the **Claimant** -the Union asserts, had consistently performed the work of constructive placement as **an** integral part of his duties, including performing such work on one of his regular days off (Sunday) over an extended period. Whether or not such work was performed elsewhere and by others is not germane to this case, the Union contends; what is important is that the Claimant's work of constructive placements at his own work location is reserved to him.

The Carrier, on the other **hand**, contends that the Union must **show that** the **Claimant** performed constructive placements to the **exclusion** of other employees in order to establish the **Claimant's** rights as set out in this case, **a** condition which the Carrier asserts does not exist here. The Carrier also contends that constructive placements are incidental work for a number of positions, not the principal duties of **any, and** that issuing constructive placement notices has never been bulletined as a principal duty.

This case is yet another in a long series **over** the proper interpretation of the "unassigned day" rule, in this instance Rule 28.

Past awards have dealt with numerous variations of the "unassigned day rule"--supervisors performing such protected work, other crafts performing such work, other **members** of the same craft performing such work for the first time on their regular rest days when such work had not previously been **performed**, etc. In this case, the **occupant** of position **0444 (Moellenbrink)** was apparently performing duties on one of his **regular** work days, Sunday, at a different location, but in the same general work area. According to the Carrier, this employee also prepared and issued constructive placement notices as part of, though possibly incidental to, his regular duties.

The central issue here, thus, is whether the Carrier violated the Claimant's rights by permitting another employee, on a regular day of work to perform constructive placements at the Claimant's duty station. Rule **28** states: "**Where work** is required by the Carrier to be **performed** on a day which is not part of any assignment...**!!**, the employee occupying position **0444** was apparently not **performing** & ties out of **his** work jurisdiction when he performed the constructive placements; what was different was the **locale** of such work.. **That** the Carrier altered the **means** of **accomplishing** such Sunday work is obvious as **well** as the purpose for such alteration--economics. **There** is nothing to indicate that the Carrier was other than entitled to do so. While its **method** of accomplishing such work (**i.e., permitting** one employee whose work station was elsewhere to operate **from** another's) may raise questions of discretion, nothing has been produced to **make** such **actions** violative of the Agreement.

The Union's contentions **are** not found to have merit.

FINDINGS: **The Third** Division of the Adjustment Board, upon the whole **record and all the** evidence, finds endholds;

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**

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The Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 16th day December 1977.

