

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23246
Docket Number CL-23207

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { **Brotherhood of Railway, Airline and Steamship Clerks,**
 { **Freight Handlers, Express and Station Employees**
 { **The Belt Railway Company Of Chicago**

STATEMENT OF CLAIM: **Claim Of the System Committee of the Brotherhood**
(GL-8920) that:

1. Carrier violated the effective Clerks' Agreement when it failed to call Clerk R. Catron, the incumbent of Position #551 for work on his rest day or September 30, 1978;

2. Carrier shall now compensate Mr. Catron for eight (8) hours' pay at the time and one-half rate of Position #551 for Saturday, September 30, 1978.

OPINION OF BOARD: **The Claimant is a regular incumbent of a 5 day position, with assigned hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.**

Prior to the incident under review, the employees represented by this Organization had been involved in a strike action against the Carrier, however the activity and picketing had terminated at 9:30 p.m. on Friday, September 29, 1978 and certain employees were scheduled to work on Saturday, September 30.

The Carrier elected to have work performed on the Claimant's position on Saturday, September 30 but, according to the Organization, the work was not offered to the Claimant, even though he was available and willing to perform same. Instead, the Carrier called a junior employee to perform the work.

According to the Claimant, utilization of the junior employee violated the Work on Unassigned Days Rule. In addition, the Claimant points out that he is senior to the employee who performed the work so that, in any event, he should have preference even if both employees perform similar duties.

On the property, the Carrier took the position that when the decision was made to perform the work in question, the Claimant was "not available" for work. The Claimant asserts that the Employee's availability could not be known by the Carrier at the time, because it did not attempt to contact him. In response, the Carrier points out that on Friday, September 29, the employee who was used in lieu of the Claimant was on duty, even though the Organization was engaged in a strike against the Carrier, and he was asked to

perform work on the following day at the close of the work day on September 29. Further, the **Carrier** states that the **fact that the picketline was eventually taken down late Friday was not something that could have been anticipated or known**, other than by the **Organization**.

We have considered the factual aspect Of this case as it **relates** to the rather clear mandates of the agreement concerning work on **unassigned days**. **Unquestionably**, a **Carrier** must make a **reasonable** effort to call a **proper employee**, and **Award 22178 specifically determined that a Carrier may not make an assumption of unavailability**. While the **normal procedures may** have been to notify **employees** on a Friday **concerning** Saturday work, we must recognize that those **procedures** would be **more** pertinent in a circumstance **different than here**. It may **very well be that the** timing of the circumstances might have precluded a lengthy exploration of **manpower** availability on the part of the **Carrier**; yet the record contains absolutely no indication that the **Carrier** took any effort to determine the Claimant's availability. Under those circumstances, we are inclined to sustain the claim, but in doing so we stress **that** each such case of this nature must be determined on its **own** individual merits.

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. Pauler*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1981.