

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10105) that:

A. Carrier violated the rules of the current Clerks' Agreement at Los Angeles, California on February 18, 1985 when it required Mr. R. A. Buchanan to take the holiday off and allowed another employe to perform his duties, and

B. Mr. Buchanan shall now be compensated for eight (8) hours' pay at the time and one-half rate on February 18, 1985 at the rate of TOFC Notification Clerk Position 6180, in addition to any other compensation he might have received, including interest payable at the prevailing prime rate, as long as he is deprived of this compensation."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant with a seniority date of February 28, 1963, was regularly assigned to TOFC Clerk Position 6180, hours 7:00 A.M. to 3:00 P.M., Monday through Friday, with a rate of \$100.17 per day. R. H. Marino, seniority date August 21, 1962, was assigned TOFC Clerk Position 6350, 7:00 A.M. to 3:00 P.M., also at a rate of \$100.17 per day.

Monday, February 18, 1985, was a holiday recognized by the Agreement (Washington's Birthday). Carrier required Claimant to observe the holiday. The Organization contends Claimant normally and regularly performs the work of notifying Los Angeles area customers of trailer arrivals and that Carrier required Clerk Marino, who was on duty, to perform that work during the hours of 7:00 A.M. - 3:00 P.M. on February 18, 1985.

Rule 27 provides:

"Regularly assigned employees shall not have their working days reduced below five per week, excepting that such days may be reduced in an individual's work week in which a designated holiday(s) falls on one of his assigned work days, to the extent of such holidays."

In pertinent part Rule 32 reads:

"32-G. In working overtime before or after assigned hours employees regularly assigned to class of work for which overtime is necessary shall be given preference, i.e.:

(1) Occupant of position to have rights to overtime work on his position.

(2) If more than one employee is regularly assigned to class of work, the senior available employee in that class of work will have prior rights to the overtime work

NOTE: This principle shall also apply to working on holidays."

The Organization argues these rules make clear that while Carrier may blank a position on a holiday, it can do so only when the work of the blanked employee is not performed by others. It argues work of notification is normally and regularly performed by Claimant and therefore he was entitled to perform the work on the holiday. The Organization refers to Decision No. 2 of the Forty-Hour Week Committee which states:

"Where work is required to be performed on a holiday which is not a part of any assignment the regular employee shall be used. ***Wherever the words 'the regular employee' are used in this paragraph, they shall mean the regular employee entitled to the work under the existing Agreement."

Carrier maintained Positions 6180 and 6350 both perform TOFC pool work which is not exclusive to either. The Organization denied this and argued TOFC Clerk Position No. 6350 was established to circumvent the Agreement. In support it submitted to the Carrier statements signed by Claimant and another employee. The statements are identical except for date, one being signed on November 7, 1985, and the other on November 13, 1985. Their text follows:

"To Whom It May Concern:

Up until such time as the Carrier advertised Position #6350 as a new position in August 1983 the duties of notification of trailer arrivals was the exclusive duties of the notification clerks, namely P. R. Booth and R. A. Buchanan. The Carrier has allowed the occupant of Position #6350, a roving or utility clerk, to assist in notification work on heavy days such as Mondays.

It has now become the established practice of the Carrier to work Position #6350 on Holidays in lieu of calling in the incumbent notification clerks."

We agree that a position may not be blanked on a holiday if the work of the position is to be performed by someone who normally does not do that work. Here the employee statements show that for a period of at least 18 months prior to the claim Position #6350 also performed Notification duties. Thus Marino, who is senior to Claimant (and who earns the same rate) performed work on Monday, February 18 that he/she normally performs on Monday. In addition we find no evidence of record to support the Organization contention that Position No. 6350 was established to circumvent the Agreement.

In a recent Award involving these parties, Third Division Award 27206, it was found that:

"The particular facts in this dispute do not lead to the conclusion that the work was improperly performed by the RFO Clerk who was on duty. This is not a case of work performed by an employee in another classification or by a supervisor, as is true in . . . many other cited Awards. In sum, one RFO Clerk remained on duty on the holidays, while the other RFO Clerk (the Claimant) was relieved for the holidays."

That seems to describe the instant situation and accordingly we will deny the claim.

A W A R D

Claim denied.

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Award No. 27568
Docket No. CL-27246
88-3-86-3-335

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1988.