

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES**

ILLINOIS CENTRAL SYSTEM

DISPUTE.—"Claim for one hour's overtime for Clerk H. L. Greer, Princeton, Kentucky, from November 16, 1932, until his claim is adjusted account of violation of Rule 36."

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

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

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

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Wm. H. Spencer was called in as Referee to sit with the Division as a member thereof.

FURTHER FINDINGS.—Prior to November 16, 1932, there were three yard clerks at the Princeton yard office, Princeton, Kentucky, whose names and tours of duty follow:

Mr. Stevens, hours of duty, 8 a. m. to 4 p. m.

Mr. Catlett, hours of duty, 4 p. m. to 12 midnight.

Mr. Greer, 12 midnight to 8 a. m.

On November 16, 1932, Mr. Greer was assigned to a tour of duty from 1 a. m. to 9 a. m.

RESPECTIVE POSITIONS OF PARTIES.—The petitioner contended that the change in Mr. Greer's hours of duty was in violation of Rule 36 of the Agreement between the parties, effective September 1, 1927. This rule provides:

"Where three consecutive shifts are worked covering the twenty-four (24) hour period the starting time of each shift will be between the hours of six and eight a. m., two and four p. m., and ten p. m. and midnight."

In support of its position that the hour in question should be paid for at the overtime rate, the petitioner cited and relied upon Rule 37 of the Agreement.

The carrier contended that the term "consecutive" means "following in uninterrupted succession"; that after the change in hours on November 16, 1932, there were not three shifts following each other in uninterrupted succession at the Princeton yard office; and that, therefore, Rule 36 with respect to hours of assignment did not apply. In support of this position, the carrier relied upon decisions Nos. 1470 and 3022 of the United States Railroad Labor Board.

The petitioner in reply contended that the situation contemplated by Rule 36 is determined, not by the fact that men successively relieve each other without interruption during a twenty-four hour period, but by the fact that the office is open and that work normally performed by an employee under the Clerks' Agreement is being performed during the twenty-four hour period. In support of this position, the petitioner relied upon decisions Nos. 881 and 4147 of the United States Railroad Labor Board.

CONCLUSIONS OF THE BOARD.—The rule in question was not intended to interfere with the carrier's right to assign men to hours of duty which would best meet the needs of the service. It was intended to protect employees against being called to work at unreasonably early hours in a single situation. In other situations, the rule leaves the management free to assign hours of duty most consistent with the requirements of the service.

The single situation in which the rule protects the employee is that described in the rule, "Where three consecutive shifts are worked covering the twenty-four (24) hour period * * *."

In determining when the situation contemplated by the rule exists, the Referee is of the opinion that the test to be applied is whether there is a substantial amount of work covered by the Clerks' Agreement being performed in the interval between shifts. Neither the fact that the office is open nor the fact that some employee on duty is incidentally performing some clerical duties during the interval creates the situation contemplated by Rule 36.

It was admitted that after the change of hours on November 16, 1932, the office in question was open continuously for twenty-four hours, and that some clerical work formerly performed by Mr. Greer was being performed between midnight and 1 a. m. The Referee finds, however, that the clerical work being performed during the interval is slight in amount and merely incidental to other duties of the employees performing it.

AWARD

The claim is denied.

By Order of Third Division:

Attest:

NATIONAL RAILROAD ADJUSTMENT BOARD.

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 6th day of February 1936.