

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
MIDLAND VALLEY RAILROAD COMPANY**

STATEMENT OF CLAIM.—

"Claim of employes representatives that assignment of Yard Clerks position at Muskogee Yards, Midland Valley Railroad, from 11:00 a. m. to 3:30 p. m., 5:30 p. m. to 9:00 p. m., rate \$4.71 per day, on bulletin No. 2, effective April 1st, 1936, is a violation of existing schedule agreement and particularly Rule No. 28 thereof; also that Mr. D. O. Mikels, assigned to the position by bulletin No. 3 of April 1st, 1936, should be compensated under Rules 27 and 31 for all time worked in excess of eight consecutive hours, exclusive of the meal period, from original starting time, at the proper overtime rate."

STATEMENT OF FACTS.—On March 28th, 1936, the following bulletin was posted asking for bids:

"MUSKOGEE, OKLA., March 28, 1936.

"BULLETIN NO. YARD 2

"All concerned:

"Effective April 1, 1936 the clerks position now working 7.59 a. m. until 3:59 p. m. is changed to work from 6:00 a. m. until 2:00 p. m.

"Effective April 1, 1936, the meal period of the 11:00 a. m. until 8:00 p. m. yard clerk position is changed from 3:00 p. m. until 4:00 p. m.

"Bids will be received until 3:00 p. m. April 2nd, for one yard clerk working from 11:00 a. m. until 9:00 p. m. with two hours off from 3:30 p. m. until 5:30 p. m. This job will work daily.

(s) G. T. LOVE."

On and after April 1, 1936, there has been no material change in train service or working requirements in Muskogee Yard Office. During the period from 3:30 to 5:30 P. M., while Mr. Mikels is off duty, there were other clerks on duty in this office. Clerk G. E. Montgomery was assigned from 11:00 A. M. to 3:00 P. M., 4:00 to 8:00 P. M., and clerk J. B. Spears was assigned from 3:59 to 11:59 P. M. During the period of Mr. Mikels' release, trains arrived and departed from Muskogee Yards. Frequently it was necessary to call Mr. Mikels for service during his period of release.

There is in evidence an agreement between the parties bearing effective date of June 14, 1921, and the following rules thereof are cited:

"RULE 27—DAY'S WORK

"Eight consecutive hours, exclusive of the meal period shall constitute a day's work, except as provided in Rule 28.

"RULE 28—SPLIT TRICKS

"Nothing herein shall be construed as permitting the working of split tricks, except at stations, yards, or roundhouses where conditions require, the eight hours, exclusive of the meal hour, may be worked in a spread of ten hours exclusive of the meal period with one intermission.

"This rule further provides that employes on a seven day week assignment may, by mutual agreement with his immediate supervisory officer, exercise the privilege of working split trick on any day.

"RULE 31—OVERTIME

"Time worked in excess of eight hours exclusive of meal period as established in Rules 27 and 28 on any day shall be considered overtime and paid for on the actual minute basis at pro rata rate for the ninth and tenth hours of continuous service and thereafter at time and a half rate, except employes will be allowed time and one half time on a minute basis for service performed continuous with and in advance of regular work period.

"It is understood that where in a given office it has been the practice to let the employe off for a part of the eight hour day on certain days of the week, such practice shall not be rescinded or departed from except in cases of emergency.

"* * *"

POSITION OF EMPLOYEES.—The normal force working in and outside of the Yard Office at Muskogee consisted of a General Yard Master, Night Yardmaster, five Clerks, and three switching crews, in addition to road crews of three lines operating in and out of the Yard. Prior to March 28, 1936, the assigned clerical force was:

- 1 clerk, hours, 7:59 A. M. to 3:59 P. M.
- 1 clerk, hours, 3:59 P. M. to 11:59 P. M.
- 1 clerk, hours, 11:59 P. M. to 7:59 A. M.
- 1 clerk, hours, 11:00 A. M. to 8:00 P. M., with meal period from 3:00 P. M. to 4.00 P. M.

Protest against the assignment of the split trick position shown on bulletin No. 2 was filed with the General Manager on March 30, 1936.

We contend that conditions prevailing in Muskogee Yard Office do not require working a split trick, and therefore such assignment is prohibited by Rule 28. The facts in the case show that service is being rendered in this Yard Office during the period 3:30 to 5:30 P. M.; that other employes come on duty during this period; that trains arrive and depart from the Yard during these hours; that the office is open and telephone instructions are received and given during this period, and that the carrier has frequently called the employe assigned to the split trick position for service during his period of release.

POSITION OF CARRIER.—Rule 28 of the agreement permits the establishing of split tricks in Yards where the conditions require it. The assigned hours of positions of Yard Clerks were arranged so as to most nearly meet the actual working conditions which fluctuate from time to time according to the variation of the arriving time of trains. The assigned hours were designated with the view of having the maximum number of clerks on duty during the periods when, according to the best information available, the important trains were most likely to be handled, so that their movement through the Yard could be expedited.

Rule 30 provides that forty-eight hours' advance notice must be given employes when the starting time of any shift is changed. Since the arriving time of these trains could not be known forty-eight hours in advance, starting time of the various shifts was arranged so as to have three Clerks on duty during a three-hour period in the morning, 11:00 A. M. to 2:00 P. M., and during a two-and-one-half-hour period in the afternoon, 5:30 to 8:00 P. M. The Clerks were on duty during those hours whether the trains arrived or not, and when the arrival at other hours made it necessary for Yard Clerks to work overtime, they were paid therefor in accordance with the applicable overtime rules.

It is the duty of the carrier to establish the necessary positions and to fix the assigned hours in accordance with the needs of the service, subject, of course, to compliance with the agreement with the employes, and should there be any service required outside of the assigned hours, the carrier is bound to make payment therefor under the rules.

While we did not believe there was any merit in the employes' protest to the assignment in question, nevertheless, for the sole purpose of trying to dispose of the dispute on the property, we changed the assigned hours on this position, March 2, 1937, reducing intermission from two hours to one hour.

OPINION OF BOARD.—Rule 28, upon which this case turns, is not a so-called "standard rule." By its provisions split trick assignments are not per-

missible except at stations, yards, and roundhouses "where conditions require" such assignments. The term "where conditions require" is, in the opinion of this Board, intended to mean that an employe's services are required to cover a spread of more than nine, but not to exceed ten hours, exclusive of the meal period, and during the period of release of the employe there is no service for him to perform, but if his services can be utilized in his class of work without release except for meal period, conditions do not require a split trick assignment.

The evidence of record in this case does not clearly show that the split trick assignment which was in effect at Muskogee from April 1, 1936, to March 2, 1937, was proper under the rules, but in view of the facts and circumstances involved, the Board feels that, as the rights of the parties are set forth in this opinion, and the further fact that the split trick assignment has been discontinued, injustice will not be done to either party if the claim for compensation is disallowed.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 interpretation of Rule 28 is sustained to the extent shown in above opinion, but claim for compensation is denied.

AWARD

Interpretation of Rule 28 is sustained to extent shown in above opinion, but claim for compensation is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 12th day of July, 1937.