

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 RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim that John Marty and/or his successors on Yard Clerks' Position No. 20 in 'C' Yard, East St. Louis, Illinois, be paid for 3 hours per day since August 16, 1933, at overtime rates."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties: "Immediately prior to August 9, 1933, there were four yard clerks' positions in 'C' Yard at East St. Louis—assigned hours as follows:

- 1 position from 7:00 A.M. to 3:00 P.M.
- 1 position from 3:00 P.M. to 11:00 P.M.
- 1 position from 11:00 P.M. to 7:00 A.M.
- 1 position from 2:30 P.M. to 10:30 P.M..

"Effective August 9, 1933, there were five yard clerks' positions in 'C' Yard, East St. Louis—assigned hours as follows:

- 1 position from 7:00 A.M. to 3:00 P.M.
- 1 position from 3:00 P.M. to 11:00 P.M.
- 1 position from 11:00 P.M. to 7:00 A.M.
- 1 position from 2:30 P.M. to 10:30 P.M.
- 1 position from 11:00 A.M. to 7:00 P.M.

"The position with assigned hours from 11:00 A.M. to 7:00 P.M. is 'Position No. 20' referred to in the Employees' Statement of Claim. Attached as Exhibit A is copy of Bulletin No. 30 issued by Terminal Superintendent Shaw under date of August 9, 1933, advertising this position. Also, attached as Exhibit B is copy of notice dated August 16, 1933, which shows that John Marty was the successful applicant for the position.

"The claim is based on Rules 36 and 37 of the schedule agreement. These rules read:

'RULE 36.

'Three-Shift Positions.

'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 10:00 P. M. and midnight.'

'RULE 37 Overtime.

[934]

which seems to be the employees' position, we do not find anything in Rule 37 to support the employees' request that he be paid for an additional 3 hours each day at the rate of time and one-half, because we required him to start work at 11:00 A.M. Among other things, this rule specifically provides that 'time in excess of eight hours, exclusive of the meal period, on any day will be considered overtime and paid on the actual minute basis at the rate of time and one-half.' The employee on Position No. 20 was not required to work regularly in excess of 8 hours, and if on a given date he did work in excess of 8 hours he was paid for the excess at the rate of time and one-half as required by Rule 37.

"There is no definite provision, or as much as an inference, in Rules 36 and 37, or any other rules of the schedule, which will support the employees' request that the Carrier be penalized to the extent of being required to allow the employee additional pay for three hours at the rate of time and one-half in a case where Rule 36 of the schedule is violated, at the same time there has been no violation of Rule 36 in this particular case.

"In this connection, we are attaching as Carrier's Exhibit No. 1 copy of Decision No. 1470 of the United States Railroad Labor Board dated December 8, 1922, and as Carrier's Exhibit No. 2 copy of this Board's Decision No. 3022 dated February 25, 1925, which decisions support our position that there has been no violation of the starting time rule of the clerks' schedule in our handling of yard clerk's position No. 20 at East St. Louis.

"The facts and circumstances in this case are as set up in the agreed upon Joint Statement of Facts and in the Carrier's position; Rules 36 and 37, as well as the other rules of the schedule, have been fully complied with by the carrier, and we do not believe further argument is necessary to convince the members of this Board that there are no reasonable grounds for the employees' request. We respectfully ask that the request be denied."

OPINION OF BOARD: The facts essential to the disposition of this dispute can be summarized briefly. Prior to August 9, 1933, the carrier maintained four positions of clerks in the "C" Yard at East St. Louis with these assigned hours:

- 1 position from 7:00 A.M. to 3:00 P.M.
- 1 position from 3:00 P.M. to 11:00 P.M.
- 1 position from 11:00 P.M. to 7:00 A.M.
- 1 position from 2:30 P.M. to 10:30 P.M.

On the date in question the carrier advertised a fifth position in the "C" Yard with an assignment of hours from 11:00 A.M. to 7:00 P.M. The starting time of this position, it will be observed, does not fall within the designated hours of Rule 36 of the agreement between the parties. It is this position which is in issue in the present dispute.

The petitioner insists that under a proper interpretation of Rule 36 the starting time of this assignment was not permissible. The rule relied upon provides that "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., between two and four P.M., and ten P.M. and midnight."

The petitioner argues that since there is continuous service at the office or station involved, and since the carrier has established a cycle of three employees, each relieving the other over a period of twenty-four hours, the carrier cannot assign any other employees at this office or station except within the limits of the hours fixed by Rule 36. The prohibi-

tion, argues the petitioner, against starting a shift between the designated hours is not limited to positions making up the "three consecutive shifts," but applies to any assignment at the station or office involved.

The carrier, in defense of its refusal to honor the claim when presented to it, states that the interpretation requested by the petitioner is not permissible. The carrier also claims in support of its position that over a period of years it had frequently made similar assignments without protest from the petitioner. The petitioner, however, emphatically denies the accuracy of this statement. Certainly the carrier did not present any records to substantiate its assertion.

The precise issue here involved has not hitherto been presented to the Third Division for decision. Both the petitioner and the carrier cite decisions of other tribunals in support of their respective positions. These precedents, however, are not very helpful in reaching a proper award in this dispute. The Division must, therefore, as fairly and as objectively as it can, place an interpretation on the rule in question.

Some assistance in the task at hand may be gained from a brief examination of the purpose of the rule. The rule or its equivalent is very pervasive in railway collective agreements. Naturally enough, these rules vary considerably in detail. It is clear, however, that all of them are intended to protect employes against being called and released at unreasonably inconvenient hours. It is clear, of course, that the application of the rule does to a greater or less extent interfere with managerial distinction. As far as it can, therefore, the Division should reach a conclusion which will adequately protect employes against the risk in question, and which will not unduly hamper management in the handling of its personnel with a view to meeting its service requirements.

The phrase "three consecutive shifts," in the opinion of the Division, must be taken to refer to a situation in which work is required to meet service requirements at a given office or station. When this situation occurs it will be found that carrier will provide a cycle of at least three employes covering a period of twenty-four hours, each relieving the other. It is obvious that, depending upon the service requirements, the carrier may find it necessary or desirable to assign three or more employes to one period of work, two or more to a second period of work, and only one to a third period. In any event, it is the opinion of the Division that each period of work constitutes a shift within the meaning of Rule 36.

It follows from what has been said in the situation described in the preceding paragraph, that the carrier, needing one or more additional employes to perform work at a given office or station, must assign them to one of the periods of work or shifts already fixed under the provisions of Rule 36. When the carrier made the assignment in issue in this dispute, it in effect established a new shift. It is the opinion of the Division that Rule 36 does not permit this in the circumstances of this dispute.

The contention of the carrier that the petitioner lulled it into repose by its long delay in the presentation of this claim to the Adjustment Board is without merit. If the contention is based on the assumption that the claim is outlawed by lapse of time, the answer is that the Railway Labor Act does not establish any limitations of time within which a claimant must present his claim to the Board. The Adjustment Board certainly has no authority to fix any such limitations.

The objection of the carrier to the payment of overtime under Rule 37 must also be overruled. It is true, as the carrier points out, that the claimant "was not required to work regularly in excess of eight hours." The Division, however, has found that the carrier made an improper assignment in this case. Accordingly, the claim, although it may be described as

a penalty, is meritorious and should be sustained. The Division quotes with approval this statement from the Report of the Emergency Board created by the President of the United States on February 8, 1937:

"The penalties for violations of rules seem harsh and there may be some difficulty in seeing what claim certain individuals have to the money to be paid in a concrete case. Yet, experience has shown that if rules are to be effective there must be adequate penalties for violation."

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 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 under the rules of the agreement between the parties the claim herein presented is meritorious and should be sustained.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 13th day of July, 1938.

DISSENT ON AWARD No. 685, DOCKET CL-670

On February 6, 1936, this Division, with Referee Wm. H. Spencer, rendered Award No. 193 in Docket CL-131, involving Rule 36 of the agreement between the Illinois Central Railroad Company and the Clerks' Organization. The same parties, agreement, and rule are involved in Award No. 685.

The "Conclusions of the Board" in Award No. 193 interpreted Rule 36, as follows:

"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 employes 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 employes is that described in the Rule, 'Where three consecutive shifts are

worked covering the twenty-four (24) hours period. * * *.”
In Award No. 193 it was held:

“The rule in question (36) 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.”

while in Award No. 685, it is held:

“* * * the rule (36) does to a greater or less extent interfere with managerial discretion, * * *.”

In Award No. 193 it was held:

“It (Rule 36) was intended to protect employees against being called to work at **unreasonably early hours** in a single situation.”

while in Award No. 685 it is held:

“It is clear that all of them (Rule 36 and similar rules of other agreements) are intended to protect employees against being called and released at **unreasonably inconvenient hours.**”

Thus the interpretation in Award No. 193 is expanded in Award No. 685 to cover both call and release and the prior reference to “early hours” is expanded to **unreasonably inconvenient hours.** “Unreasonably inconvenient hours” for reporting for or release from duty are matters of individual personal opinion and certainly a reporting time of 11:00 A.M. and release at 7:00 P. M. cannot be considered “unreasonably inconvenient hours.” This interpretation is not warranted in view of the clear provisions of Rule 36 and interpretation of this rule contained in Award No. 193.

In Award No. 193 it was held:

“In other situations (except to protect employees against being called to work at unreasonably early hours) the rule (36) leaves the management free to assign hours of duty most consistent with the requirements of the service.”

while in Award No. 685 the Carrier is told it was not free to assign position No. 20 to such hours as best met its service requirements (11:00 A.M. to 7:00 P.M.)

In Award No. 193 it was held:

“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. * * *.’”

This interpretation was correct, because the subject of the rule is “three consecutive shifts covering the twenty-four hour period” and the qualification is that “the starting time of **each shift**” will be between stipulated hours. The words “each shift” have application only to “three consecutive shifts” and the clear and definite language of the rule admitted no other interpretation.

To hold (Award No. 685) that if the Carrier needs, in addition to three consecutive shifts, one or more additional employees (not part of the three consecutive shifts) they must be assigned to one of the shifts already fixed under the provisions of Rule 36, it is necessary to find that Rule 36 means **no shift** will have a starting time except between 6 and 8 A.M., 2 and 4 P.M., and 10 P.M. and midnight, at points where three consecutive shifts of the same class are in existence performing the same kind of work. Such interpretation disregards not only the Carrier’s right to assign men to hours of duty as best meets the needs of the service, does

not leave the management free to assign hours of duty most consistent with requirements of service, as provided by Award No. 193, and disregards the fact that the rule applies only to the starting time of each shift of three consecutive shifts covering a twenty-four hour period.

By no process of reasonable interpretation can it be held that Rule 36 applies to any situation except that specifically set forth therein, which comprehends only situations involving the working of three consecutive shifts. The term "three consecutive shifts" embraces only shifts that follow in succession. Positions working 2:30 P.M. to 10:30 P.M., and 11:00 A.M. to 7:00 P.M., do not form any part of three consecutive shifts. They are entirely independent and do not successively follow any other.

We dissent from this award, as the conclusions and findings therein are wholly unwarranted under the agreement between the parties.

/s/ R. H. ALLISON
/s/ GEO. H. DUGAN
/s/ A. H. JONES
/s/ C. C. COOK
/s/ J. G. TORIAN