

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood in behalf of John Paul Neff and/or his successors on Position No. 350, car clerk, Clovis, New Mexico, for three hours pay at overtime rates for each day worked on Position No. 350 with assigned hours 2:00 A. M. to 10 A. M., retroactive to June 21, 1938."

EMPLOYEES' STATEMENT OF FACTS: "Prior to June 21, 1938 three shifts of clerks were maintained in this yard consisting of one position on each shift. The volume of clerical work on the third shift had increased to such an extent that the Carrier found it necessary to increase the number of positions on the third shift from one to two and on June 21, 1938 created an additional position of Car Clerk but assigned the position with a starting time of 2:00 A. M."

CARRIER'S STATEMENT OF FACTS: "Immediately prior to June 21, 1938 there were three car clerks' positions at Clovis, New Mexico, with assigned hours as follows:

315—1st Chief Car Clerk— 7:00 A. M. to 3:00 P. M. daily
330—2nd Chief Car Clerk—11:00 P. M. to 7:00 A. M. daily
360—Car Clerk — 3:00 P. M. to 11:00 P. M. daily

"The volume of work increased to such an extent between the hours of 2:00 A. M. and 10 A. M. that the Carrier found it necessary to establish an additional position so that effective June 21, 1938 there were four car clerks' positions at Clovis, New Mexico, with assigned hours as follows:

315—1st Chief Car Clerk— 7:00 A. M. to 3:00 P. M. daily
330—2nd Chief Car Clerk—11:00 P. M. to 7:00 A. M. daily
350—Car Clerk — 2:00 A. M. to 10:00 A. M. daily
360—Car Clerk — 3:00 P. M. to 11:00 P. M. daily

"The claim has been presented by the employes, and denied by the Carrier, on the basis of Section 7, Article VII, of the current agreement between the Carrier and the Employes, such provision reading as follows:

'Section 7. Where three consecutive shifts are worked covering the 24-hour period they will not have a starting time after 12 o'clock midnight and before 5:00 A. M.' "

when one of three shifts working consecutively did commence. Thus is completely destroyed, by the employes' own contention, the sincerity of their contention in the case as presented to the Board.

"The Board has held in Award 193 that if instead of adding a fourth shift, one not in continuous service, the carrier had simply broken the continuity of the three shifts in continuous service and began one of them at 2:00 A. M., there would have been no violation of a rule similar to the one here in question. Such being the case, it can not be argued with any plausibility that when the carrier starts a fourth shift, not one of three shifts in continuous service, it has to start such fourth shift just as though it were one of three shifts in continuous service. The interpretation sought by the employes is artificial, divorces the rule from the obvious purpose it was designed to serve, and would make of the rule an instrument designed solely to force the employment and compensation of persons at times when there is no work for them to perform.

"Petitioner states that 'This is another case where the motive to effect operating economies was stronger than the desire to fairly apply the rules of the agreement.' The use of the word **another** insinuates a charge that this carrier consistently and as a course of action, attempts to violate its contractual obligations for the purpose of saving the money that would be expended in meeting them. This insinuation we challenge, first, as completely unfounded and impossible of proof and, secondly, as an attempt to inject an entirely irrelevant and unsupported insinuation of customary bad faith to serve as a basis for an otherwise groundless claim. It would not be necessary to support an even colorably valid claim by such a device.

"This carrier is not accustomed to operating wastefully. It is not the object or the prerogative of this Board to render impossible the efficient operation which is enjoined upon management. The sole responsibility and duty of this Board is to interpret agreements, and settle disputes concerning their application. In the function of interpretation the Board may properly consider whether or not language susceptible of more than one interpretation is susceptible of a reasonable and socially beneficial interpretation. If such an interpretation is possible, and choice is otherwise evenly balanced, the choice should go to that interpretation which is a reasonable one, which does not force upon an industry fiscally hard-pressed extravagant and socially unproductive wastes and which will strengthen instead of weaken that industry, and tend to preserve it for the public, the owners, and the employes, instead of to destroy it.

"The rule in question has been harmoniously applied on this property for a long time, and never with a suggestion by the employes that any such interpretation as now advanced was either possible or proper."

OPINION OF BOARD: Prior to June 1, 1938, there were three car clerk positions at Clovis, New Mexico, with assigned hours as follows:

1st Chief Car Clerk—	7:00 A. M. to 3:00 P. M. daily
2nd Chief Car Clerk—	11:00 P. M. to 7:00 A. M. daily
Car Clerk	— 3:00 P. M. to 11:00 P. M. daily

On June 21, 1938, a fourth car clerk was added and assigned hours 2:00 A. M. to 10:00 A. M. daily. The record discloses that this fourth car clerk was added because of the volume of work during the hours assigned to this position. Article VII, Section 7, of the agreement between the carrier and the employes, provides:

"Where three consecutive shifts are worked covering the 24-hour period they will not have a starting time after 12 o'clock midnight and before 5:00 A. M."

The employes contend that the carrier violated this provision of the agreement when it assigned hours commencing at two o'clock A. M. to the position of fourth car clerk.

The clear language of the rule protects employes who follow each other in consecutive shifts against being called during the prohibited hours. So long as the work requires consecutive shifts, the rule provides that no one of the consecutive shifts shall be commenced during the prohibited hours. To this extent the language of the rule goes, and no further. The employes contend, however, that any additional employee cannot be assigned a starting time within the prohibited period. This contention cannot be sustained in view of the clear language of the rule, and without reading something into the rule that language fails to state. This rule relates specifically to three consecutive shifts, and simply provides that "they" shall not have a starting time within the prohibited hours. The carrier has carefully complied with this rule so far as the three consecutive shifts are concerned. We find nothing in the rule which requires the carrier to assign an additional employee to one of the three established shifts, which was the position of the employes in the first instance. Neither do we find anything in the rule which requires that an additional employee, where three shifts are working, be assigned a starting time other than during the prohibited hours contained in the rule, which is the position finally taken by the employes. The rule relates simply to the three consecutive shifts. The fourth employee is not one of the three consecutive shifts and is not covered by the rule.

The employes rely upon Award No. 685. That award holds, under a rule similar to the rule here involved:

"... 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. . . ."

Certainly no language of the rule which we are now considering contains any such requirement. We think such a holding, if applied to the present rule would be an extension of the rule rather than an interpretation. This rule is clear; it relates simply to "three consecutive shifts," and provides that "they" shall not have a starting time within the prohibited hours.

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 employee involved in this dispute are respectively carrier and employee 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 there is shown no violation of Article VII, Section 7, of the current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of January, 1941.