

Award No. 1395

Docket No. CL-1441

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the assignment of a starting time between 12:00 midnight and 5:00 A. M. to a position designated as 'Yard Clerk in the Grove Yard, Northtown' is improper and that E. A. Anderberg, J. A. Morrissey and C. J. Murphy should be paid at overtime rates for all time held after 8:00 A. M. on May 21, 1940, and subsequent dates on which they performed service on this position, based on Rule 60 of the Clerks' Agreement."

EMPLOYES' STATEMENT OF FACTS: "Prior to May 15, 1940, thirty-two (32) clerical positions were maintained in the Northtownyard, two of which were assigned to perform service in what is known locally as the 'Grove yard.' One of these two positions was assigned to work from 6:00 P. M. to 2:00 A. M., the other from 5:00 A. M. to 1:00 P. M. Effective May 15, the hours of assignment of these two positions were changed, the afternoon shift starting at 5:00 P. M., the other being assigned to work from 1:00 A. M. to 9:00 A. M. On May 22, this latter assignment was again changed, the hours then becoming from 2:00 A. M. to 10:00 A. M. Messrs. Anderberg, Morrissey, and Murphy worked on this position on various dates starting May 17, 1940. Grove yard is a part of Northtown yard, is under the jurisdiction of the General Yardmaster at Northtown and the clerks work under the General Yardmaster and Chief Clerk at Northtown. Employees report at Northtown before going on duty and again before going off duty, starting and quitting at Northtown, where yard clerks are on duty twenty-four (24) hours per day. Claim was filed by employees named above in accordance with the Clerks' Agreement."

CARRIER'S STATEMENT OF FACTS: "The main train yard of Minneapolis terminal is designated as Northtown yard. There are six other yards in Minneapolis terminal, viz., Minneapolis Lower Yard, East Minneapolis Yard, Northeast Minneapolis Yard, Southeast Minneapolis Yard, Park Junction Yard and Grove Yard. Yard clerks are assigned to service in Northtown yard, Minneapolis Lower Yard, East Minneapolis Yard, Northeast Minneapolis Yard, Southeast Minneapolis Yard and Grove Yard. These yard clerks are under the jurisdiction of the General Yardmaster of the Minneapolis terminal and report to the Chief Yard Clerk whose office is located at Northtown."

"Two yard clerk positions perform service in Grove Yard."

"On May 21, 1940, the assigned hours of these two positions were:

5:00 P. M. to 1:00 A. M.

1:00 A. M. to 9:00 A. M.

there still are not three consecutive shifts worked in the Grove Yard covering the twenty-four hour period and the restriction imposed in Rule 60 can have no application.

"Rule 60 may be searched in vain to find any language that will sustain the Employees' contention, or to find one word that does not sustain the Carrier's contention. Where in Rule 60 is there any mention of anything other than three consecutive shifts covering the twenty-four hour period? Can any mention be found of any restriction other than to the three consecutive shifts covering the twenty-four hour period? Where in the rule is there any reference to other positions or to location of positions or to considering a series of positions other than these specifically covered by the rule? The answers to these questions will show the fallacy of the Employees' position. But the Employees have gone further in this case; they contend that not only should Northtown Yard proper be considered, but also another yard in which three consecutive shifts are not worked in the twenty-four hour period. If there is anything in Rule 60 that even by implication sustains the Employees' position the Carrier confesses it cannot find it, and respectfully says that neither can this Board find it.

"United States Railroad Labor Board Decision No. 3022 recognized that there must be in fact three consecutive shifts in order to have Rule 60 apply. In the case before you three consecutive shifts are not worked in a twenty-four hour period in the Grove Yard.

"A case involving the application of this rule arose at Billings, Montana. There was an assignment of yard clerks at that point as follows:

8:00 A. M. to 5:00 P. M.

5:00 P. M. to 2:00 A. M.

3:00 A. M. to 11:00 A. M.

The Employees contended that the assignment from 3:00 A. M. to 11:00 A. M. was in violation of Rule 60. This case was submitted to the United States Mediation Board and below is quoted settlement of that case in mediation:

'Board of Mediation File GC-1111:

'Claim of E. J. Desmarais dated May 21, 1931, that the hours of assignment on position of train desk clerk in Billings yard office were in conflict with the provisions of Rule 60 of the Clerks' Schedule and that he be paid for period 12 midnight to 3:00 A. M.

'Settlement: Claim withdrawn by the employees without prejudice.'

"The case covered by Mediation File GC-1111 was a much closer case on the question of application of Rule 60 than is the case now before you. In the instant case there is no showing that three consecutive shifts are worked or could be worked in the Grove Yard.

"There is no foundation for the Employees' claim under Rule 60 or any other rule of the Clerks' Schedule."

OPINION OF BOARD: There is here an initial question of fact which must be resolved against the carrier. Even though Grove Yard may not be physically a part of Northtown Yard, yet from the standpoint of car clerks working the two yards, the operation is a unit. It is not ignored that the Grove Yard is about one-half mile from the Northtown Yard. That does not alter the fact that in respect to car clerks the operation of the two is unitary.

The next step is to apply Rule 60. It reads thus:

"**THREE-SHIFT POSITIONS**—Where three consecutive shifts are worked covering the 24-hour period no shift will have a starting time after 12 o'clock midnight and before 5:00 A. M."

That means that neither any one of the existing shifts, nor any shift additional thereto, will have a starting time within the prohibited period of 5 hours.

The two conclusions thus stated compel allowance of the claim. The clerical work done at the Grove Yard was too obviously a part of the operation at Northtown, too plainly an incident of it, to allow any other conclusion under the Rule.

A settlement (not a decision) of another claim has been cited as authority. Apparently the result was reached by compromise. Such settlements should be encouraged. The Referee questions the propriety of citing them as to a claim which is contested to decision here. If the parties may not compromise such a claim without subjecting themselves to the danger of later having their action construed as an admission against them, a long and objectionable step will have been taken to discourage amicable adjustments on the property. That observation has some, but not as much, application to the results of arbitration.

The zoning of the Minneapolis yards for traffic purpose is considered irrelevant. Such zoning in a large terminal normally groups together yards which are otherwise separate and distinct affairs, not only in the physical sense but also for operation.

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 there has been a violation of Rule 60 as claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1941.

Dissent to Award No. 1395, Docket No. CL-1441

The language of Rule 60, which governs in this case, having been mutually agreed upon, was unquestionably for mutual protection of the interests of the two parties in the very practical situation which the variable demands for railroad service throughout a continuous 24-hour period of the day presented to them. Where the work required three consecutive shifts, the rule provided for the employes that none of those shifts should be started during the prohibited hours specified in Rule 60; it provided for the Carrier that it would be protected from restriction in its normal operations where its service demanded independent assignments other than or not involving three consecutive shifts.

Such has been the normal and reasonable interpretation of the rule in respect to the practical railroad operations to which it applied. The new and extended meaning with its restrictions upon the efficient and economical operations of the railroad given by this award is unwarranted.

/s/ A. H. JONES
/s/ R. F. RAY
/s/ R. H. ALLISON
/s/ C. C. COOK
/s/ C. P. DUGAN