

Award No. 2485  
Docket No. CL-2557

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES  
PEORIA & PEKIN UNION RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that—

(a) The carrier violated the Clerks' Agreement in September of 1942 by refusing to permit yard clerks C. O. Sanders, Geo. Fitch, Melvin Aitken, E. J. Honold, to work overtime on Sunday.

(b) The employees be compensated punitive rate for the following dates—C. O. Sanders, September 6, 1942; Geo. Fitch, September 13, 1942; Melvin Aitken, September 20, 1942; E. J. Honold, September 27, 1942.

**EMPLOYEES' STATEMENT OF FACTS:** Messrs. Sanders, Fitch, Aitken, and Honold are the regular incumbents of yard clerk positions at East Peoria Yard Office, such positions being six day assignments with Sunday as day of rest. These positions are not filled on Sunday because they are not considered as necessary to the continuous operation of the carrier. On the Sundays in question; namely; September 6th, 13th, 20th and 27th service requirements necessitated the working of one of the positions held by claimants to handle the temporary increase in business. Four employees not holding regular assignments were used as yard clerks for the four Sundays in question, and performed work identified as work normally and regularly performed by the claimants during the normal work week. The employees not holding regular positions were compensated at rate and one-half for this Sunday work.

**POSITION OF EMPLOYEES:** There is in effect an agreement between the parties bearing the effective date of March 17th, 1938 and the employees submit the following in support of their position:

**Rule 21**

"(h) In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and Holidays."

The above quoted rule was written into the agreement to guarantee to the regular assigned employees the right to work overtime if work on their particular positions necessitated any overtime work and it has so been recognized by the carrier up to the instant case.

**Rule 22**

"(a) Work performed on Sundays and the following legal Holidays, namely—New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the state, Nation or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on

ment was made in each case; that the claims of the four individuals are without merit, and that there was no violation of any schedule rule. Carrier requests that your Board so find.

**OPINION OF BOARD:** On four Sundays, September 6, 13, 20 and 27, 1942, due to a temporary increase in business, the Carrier called an extra or unassigned employe to perform extra work of the same class to which the employes for whom this claim was brought were regularly assigned on week days. The regularly assigned employes claim that the work should have been assigned to them as overtime work. The applicable rule is: "In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and holidays." Rule 21 (h), Current Agreement.

The work performed by the extra or unassigned employe on these four Sundays was clearly the same class of work performed by regular yard clerks on week days. There was a clear violation of the agreement when these regular yard clerks doing the same class of work were not assigned to perform it. See Awards 1630 and 2388. Three of the claiming employes, Fitch, Aitken and Honold are conceded to be the regular occupants of six-day weekly assignments as yard clerks, with Sunday designated as their day off. As to these three, the claim is clearly sustainable. This is so even if, as claimed by the Carrier, there were regular yard clerks senior to them who had a prior right to the work where it appears, as here, that they have made no claim for punitive pay. See Award 2388 and other awards therein cited.

As to the claim of Night Chief Yard Clerk Sanders, a different situation exists. He occupied a seven-day weekly assigned position, 3:00 P. M. to 11:00 P. M., with Sunday off, the Sunday work being performed by a regular assigned relief clerk. It seems to us that Sanders had a right to the work preferential to any right the extra employe may have had. We do not intend to decide and do not decide that Sanders had a preferential right over yard clerks doing the same or similar work. The Carrier contends that the overtime work was not the same class of work as that performed by Sanders on week days. There is no evidence so indicating, other than the title of Sanders' regularly assigned position, which the Carrier construes as one with supervisory duties. Even if some supervisory duties were imposed, we do not think that fact would remove him from the class of work performed by yard clerks where such supervisory duties pertained only to the work of yard clerks. Consequently, we conclude that the whole claim should be sustained.

**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 the Carrier violated the agreement as claimed.

#### AWARD

Claim (a and b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 29th day of February, 1944.