

Award No. 3166
Docket No. CL-3112

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF
TEXAS, (Berryman Henwood, Trustee)**

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

Ticket clerks, Margaret Mahle, Milly Heffler, Geraldine Mase, Willie Kay, Rosine Hill, Margaret Walker and their successors be paid the difference between pro rata and punitive rate for each Sunday worked at Camp Hood, Texas, subsequent to April 19, 1943.

EMPLOYEES' STATEMENT OF FACTS: Prior to this dispute, no Ticket Clerks were employed at Camp Hood, Texas. April 19, 1943, Superintendent W. G. Hazlewood issued advertisement bulletin No. 8 reading as follows:

**"BERRYMAN HENWOOD—TRUSTEE
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
OF TEXAS—DEBTOR
OFFICE OF SUPERINTENDENT
TEXAS DIVISION**

ADVERTISEMENT NO. 8

ALL CLERKS:

Tyler, Texas—April 19, 1943.

Bids will be received in this office for a period of seven (7) days, or until 5:00 P. M., April 26, 1943, on the following positions:

1. Ticket Clerk, North Camp Hood, rate \$6.15 a day, assigned hours 10:30 A. M. to 6:30 P. M., six days a week, Monday off day. This is a new position.
2. Ticket Clerk, North Camp Hood, rate \$6.15 a day, assigned hours 10:30 A. M. to 6:30 P. M., six days a week, Monday off day. This is a new position.
3. Ticket Clerk, North Camp Hood, rate \$6.15 a day, assigned hours 10:30 A. M. to 6:30 P. M., six days a week, Tuesday off day. This is a new position.

Award 2282 covered a claim that a warehouse foreman should have been called for Sunday work instead of using a car clerk who was on duty. This claim is entirely foreign to the matter now under consideration.

Award 2341 involved a claim that when necessary to use regularly assigned clerks on their off day, the senior clerks should be used under terms of the agreement in effect. Therefore, it in no way involved claims similar to the present case.

Award 2421 covered claim that laborer called for special work outside of assignment should be paid at the rate of assignment rather than at rate of the work performed. Hence, it has no application in the present case.

Award 2426 involved claim that regularly assigned clerks should have been called on their off day in lieu of employees not holding seniority as clerks, and likewise has no application in the present case.

Award 2450 involved claim that timber treating plant employees were not necessary to the continuous operation of the Carrier. Such work is clearly not comparable to the work of ticket clerks.

Award 2459 involved interpretation of a special rule which permitted clerks to double over on another shift without payment of overtime in certain instances. Sunday work was not involved, and the decision has no bearing on the present case.

Award 2482 covers claim that in office manager in Accounting Department was not necessary to continuous operation of the Carrier, and clearly has no bearing in the present case.

Award 2494 also is not applicable. It involved the issue of an agent performing work on Sunday that was performed during the week by clerks.

Thus, it is apparent that the majority of the awards referred to by the Employees have no bearing on the present case, and none of them cover parallel cases.

In conclusion, the Carrier desires to point out again that the Sunday work was necessary. It could not be avoided by any means short of curtailing passenger service which would deny a large number of soldiers at North Camp Hood a means of transportation to and from points to which they desire to travel for recreation while on week end passes. The assignments were made with the intention of providing a minimum of four positions seven days a week, with two relief positions. Under these conditions, the rules do not require the payment of time and one-half for the Sunday work, and the Carrier respectfully requests that claim be denied.

OPINION OF BOARD: On April 19, 1943, the Carrier created and bulletined six new positions of Ticket Clerk at North Camp Hood, all carrying the same rate of pay and the same assigned hours of work. The positions were numbered 1 to 6 on the bulletin and the day of rest designated for each as follows: Positions 1 and 2, Monday; Nos. 3 and 4, Tuesday; No. 5, Wednesday; and No. 6, Thursday. All six Ticket Clerks worked on Friday, Saturday and Sunday of each week. No reference is made to a relief clerk on the bulletin advertising the positions. It is the contention of the Organization that as these positions were not filled on their relief days they cannot be treated as positions necessary to the continuous operation of the Carrier within the meaning of Rule 61 of the current Agreement, and that Petitioners are therefore entitled to compensation at the time and one-half rate for Sundays worked.

The applicable portions of Rule 61 are:

"Work performed on Sundays * * * 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 such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

The Carrier contends that four new positions necessary to the continuous operation of the Carrier were created and, in order to provide one day off in seven, two additional positions were established which provided relief service on the four rest days and rendered additional service in handling peak business on week-ends.

We agree that Carrier could properly treat the position of Ticket Clerk as one necessary to the continuous operation of the Carrier and, if the position be filled seven days per week, then the Carrier could avoid the time and one-half rate provided for in the forepart of Rule 61 and compensate at the pro rata rate provided for in the latter portion of the rule. The question for determination is whether the Carrier established the positions in such a manner as would avoid the penalty rate for Sunday work. To us it is evident that Carrier actually created six new positions with one day off other than Sunday and blanked the days when the regular occupants of the position were off duty in accordance with their assignment.

It has been long established that a position necessary to the continuous operation of the carrier, sufficient to permit Sunday service at the pro rata rate, must be positions worked seven days a week; that there must be a regularly assigned incumbent of the position; that such incumbent must be accorded one day off in seven; and that it is essential that the day off be filled. Award No. 594. The contention of the Carrier that four seven day positions necessary to the continuous operation of the Carrier were created and that the other two were relief positions with additional service added to fill out their week, is in direct conflict with the rule announced in Award No. 750, to-wit: "...the relief must be real, actual, not merely asserted by the designation of someone as supposed to be relief when that one might in fact be engaged on his own regular work even though it might be of same character as the others."

The Carrier cannot properly blank the rest days of the occupants of these positions and continue to assert that they are seven day a week positions necessary to the continuous operation of the Carrier. The rule was well stated in Award No. 594 as follows:

"The decisions have concluded that if relief can be dispensed with on the day off of the regular incumbent of the position, it is self-evident that the position cannot be one in continuous operation. In other words, that would be a contradiction in terms to call it a seven-day position and yet blank it on one day."

We are obliged to say that the Carrier failed to bring itself within the latter portion of Rule 61 in establishing these positions. Consequently, Claimants are entitled to compensation at the time and one-half rate for all Sundays worked until such time as compliance has been had with the latter part of Rule 61.

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 parties waived oral hearing thereon;

That 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 the current Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1946.