

Award No. 3381

Docket No. CL-3388

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

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

(1) That Carrier violated the Clerks' Agreement when it failed and refused to call Stockkeeper E. J. Miller for necessary Sunday and Holiday work attaching to his position at Marion Storehouse, Marion, Ohio, and performed by him six days each week Monday through Saturday, during the hours of his regular assignment 3:00 P. M. to 11:00 P. M., and

(2) That Stockkeeper E. J. Miller be compensated under the provisions of Rules 25 and 30 for eight (8) hours each Sunday and Holiday from and after April 1, 1945, when such work was performed by employees not covered by the Clerks' Agreement and Mr. Miller was not used, at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Effective April 1, 1945 employee E. J. Miller assigned to the position of Stockkeeper at Marion Storehouse, Marion, Ohio, with Sunday as his assigned relief day.

Many months prior to that date Carrier's attention was directed to the fact that this position was being worked on Sundays and Holidays by employees not covered by the Clerk's Agreement.

A Toolroom Attendant, an employee covered by the Machinists' Agreement unlocked the Storeroom on Sundays and Holidays and the Toolroom Attendant, Mechanics and others helped themselves to material and supplies. Order and invoices were deposited on the Stockkeeper's desk and were disposed of the next day as opportunity permitted. This action and violation was protested to the Carrier, but employees not covered by the Clerk's Agreement continued to perform the work each Sunday and Holiday.

Because of the low rate of pay on the position and undesirable hours, there was a constant change of personnel on the position, resulting finally in the assignment of employee Miller to the position, and the resulting claim due to the continuing violation of the Clerk's Agreement, payment of which has been denied. Employees not covered by the Clerk's Agreement are continuing to help themselves to material and supplies on Sundays and Holidays, thus continuing the violation of the Clerk's Agreement.

POSITION OF EMPLOYEES: There is in effect between the parties an Agreement bearing effective date of December 1, 1943 revised July 1, 1945, which contains the following rules:

This claim should be denied by Third Division for the following reasons:

1. Carrier has not violated any rule of the Clerks' Agreement.
2. There was no reason to call Stockkeeper E. J. Miller for Sunday and Holiday work because there was no stockkeeper work to be done on Sundays and holidays.
3. The work that is done by Tool Room Attendant on Sundays and holidays is and has always been done regularly every Sunday and Holiday and has been done by tool room attendants for many years prior to any agreement. It is part of the tool room attendants' assignment and is not stockkeeper work.
4. Even if stockkeeper position on second trick was reassigned to work seven days, Miller would be assigned six days and relief or extra stockkeeper would work on seventh day. When a relief employee is not available on seven day positions, extra qualified employees are given preference in filling temporary vacancies of three days or less duration. Miller therefore would not have preference to work Sundays and holidays in such circumstances.
5. Employees are asking the Third Division by an award to classify this work done by tool room attendants as stockkeeper work to be done only by a stockkeeper. Such a decision by the Third Division would nullify practices that have been in effect at Marion, Ohio and many other locations for many years and would establish a new rule. There is no classification of work rule in the agreement. Tool Room Attendants have right to continue to do work of their assignments same as they have always done because Clerks' rules do not restrict them from such work. (See Award 1709.)
6. The Third Division by Award 2641, assisted by Referee Shake, said "almost every laborer on a railroad is at some time or another entrusted with the care and safekeeping of some company equipment or material." In effect this is what the tool room attendant does on second trick on Sundays and holidays and every day on third trick. It is and always has been a part of assignment of Tool Room Attendants at Marion, Ohio.
7. Article 1, Scope, Rule 1, sets forth the type of positions and employees who are covered by the agreement. This rule was never intended to remove work from other positions not covered by the agreement.
8. There was no stockkeeper position abolished and work assigned to another employee. No work has been removed from any stockkeeper position. Tool Room Attendants have always done such incidental work.
9. Award 1709 by Third Division sustains Carrier's position.

OPINION OF BOARD: On February 27, 1944, the second trick position of Storekeeper was established in the storehouse at Marion, Ohio. The assigned hours of this position were from 3:00 P. M. to 11:00 P. M., six days per week, Monday through Saturday. On Sundays and holidays Toolroom attendants under the Agreement with the Shop Crafts secured materials from the storehouse, leaving the forms referred to as "1410 orders" from which the Stockkeeper kept such records as were required. These Toolroom attendants do no pricing and keep no records, but the fact remains they did secure the desired materials which they would have secured from the Stockkeepers during week days. And if secured during the second trick position, the materials would have been received from the Claimant.

This Board has constantly held that if the week day work is assigned to a position, the Carrier cannot assign any Sunday or holiday work of the position to employees not covered by the applicable agreement. See Awards Nos. 2052, 2549 and 2858.

Award 2858 involved the first trick Stockkeeper at Marion, Ohio, and the issues in that Award are almost identical with the issues in this Award.

In that Award, all defenses of the Carrier were ruled adversely to it. We approve what was said in the opinion of that Award.

The position is "necessary to the continuous operation of the Carrier", as contemplated by Rule 30, and the Claimant is entitled to be paid under this rule. There is no provision in Rule 30 (a) which provides for payment for less than eight hours for work performed on the seventh day—that is Sunday in this claim. Hence the rules require payment for eight hours on an overtime basis under the facts in this record. See Award No. 3315.

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 the Carrier violated the Agreement as contended by the Petitioner.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1947.