

Award No. 3428
Docket No. CL-3484

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY—PACIFIC LINES

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

(a) Carrier violated and continues to violate the rules of Clerks' Agreement, specifically Rule 25 thereof, when it required and continues to require employe Marjorie Wiley and/or her successors, on position of Car and Demurrage Clerk, Oakland, California, Kirkham Street Freight station, to perform service on Sundays at the straight time rate of her position.

(b) Marjorie Wiley and/or her successors be compensated (less compensation already received) on time and one-half basis at the rate of her position, for all Sunday service performed on her position, retroactive to June 16, 1944.

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing date of October 1, 1940, as to rules and working conditions is in effect between the parties to this dispute. The employe involved in this instant claim covered by that Agreement.

The position of Car Desk and Demurrage Clerk, involved in this instant claim was first established in January, 1942. The position was worked for approximately six months on a 6-day basis; at the end of that period, the incumbent was requested to perform service on his day of rest, which was Sunday. Subsequently the Sunday work was discontinued until, on June 16, 1944, the position was bulletined for seniority choice and assigned to Claimant herein, Marjorie Wiley, the assigned day of rest being Friday. Concurrently a relief schedule was bulletined, including for the first time, relief for the position of Car Desk and Demurrage Clerk.

This instant claim was initiated by Division Chairman in a letter dated March 23, 1945, addressed to Division Superintendent, and reading as follows:

Mr. E. D. Moody,
Supt. S. P. Co.
Oakland Pier, California.

"File 2993
224 Blake Block
Oakland, California,
March 23, 1945

Dear Sir:

Claim is herewith presented that Marjorie Wiley, Car & Demurrage Clerk, Kirkham Street, who is required to perform service on

In the third place, the general chairman is apparently relying upon a certain portion of the language used in the Opinion of Award 2280, namely, "work necessary to keep the trains running and the railroad in physical operation". This language construed strictly would mean that only certain station and yard forces covered by the current agreement whose work is directly connected with the actual running of trains are necessary to the continuous operation of the carrier. Such a position would be in direct opposition to the intention of the parties who agreed to Rule 25. There can be no question that said parties did not by any means intend such a limited application of Rule 25. Furthermore, by examination of the entire opinion in Award 2280, it is evident that the Division did not intend such a limited application of Rule 25. Attention is directed to the following language contained in the opinion:

"* * * In case before us the Carrier says that the demand of the officers of the Port of Embarkation made it mandatory on it to employ the two manifest clerks, and to keep them, or some other person, in the stated position at all times; and that this alone makes them necessary to the continuous operation of the railroad. We do not believe this position can be sustained. **These clerks had little, if anything, to do with the actual operation of the railroad.** What they did was to keep track of shipments, and to inform shippers of the location and progress of shipments over the line. **If they had any power to direct operations,** the record fails to disclose it. It may be that what they did was important, from the standpoint of keeping shippers informed and satisfied, **but it is not likely that their work contributed to or accelerated railroad operations to any appreciable degree.** Failure to be in position to inform shippers of the location on the line, and progress, present and prospective, of shipments, does not, necessarily, affect the operation of the railroad. We are, therefore, of the opinion that, as the phrase has been understood to mean, and as it has been uniformly applied in previous awards, the position of manifest clerk, for the particular duty assigned, was not one 'necessary to the continuous operation of the railroad.'"

(Emphasis ours.)

In the light of this language there is definite reason to believe that if the position of car clerk in the instant case was before the Division in Award 2280 instead of the position of manifest clerk that actually was before the Division in said Award, the Division would have held that said position was necessary to the continuous operation of the carrier.

It will be noted that in Award 1614 (Award 1622 is based on Award 1614) the opinion states in part as follows:

"* * * The question really is what work is necessary to meet the public demand for actual transportation on Sundays and holidays, or, in other words, what work is necessary for the continuous operation of trains."

Applying this question to the instant case, it will be noted that the work of the claimant in the instant case was necessary on Sundays in order to meet the public demand for actual transportation, and likewise performed work necessary to the continuous operation of the carrier's trains.

The carrier submits that neither Award 1622 nor Award 2280 presents any basis whatever for sustaining the claim in this docket.

CONCLUSION

The carrier submits that it has conclusively established that the claim in this docket is without basis, and therefore respectfully submits that it should be denied.

OPINION OF BOARD: The question to be determined in this dispute is whether the position of Car and Demurrage Clerk is a position "necessary to the continuous operation of the Carrier" in contemplation of Rule 25. The rule provides for payment at the rate of time and one-half for work performed

on Sundays and holidays unless it is work necessary to "continuous" operation.

The essential facts are: that the position was established as a six-day position and continued on that basis for about six months when the incumbent was required to work on Sunday; that the Sunday work was later discontinued until June 16, 1944, when the position was bulletined on the basis of a seven-day position necessary to continuous operation; that the principal duties of the position are handling diversions, posting messages in Jumbo Book, answering telephone calls as to diversions and such detail as may be connected therewith.

Many awards were cited in support of Carrier's position from which it would appear the parties to the disputes either agreed or assumed that positions, imposed with duties of kindred character to those of the position involved here, were "necessary to continuous operation" in contemplation of the Sunday and holiday rule. From our reading of those Awards we do not think the issue—whether the position was necessary to continuous operation—was presented to the Division for decision.

On the other hand, where the issue has been presented for decision the Division has consistently applied a strict construction to the rule, holding in effect, that positions "necessary to continuous operation" must embrace "work necessary to keep the trains running and the railroad in physical operation". Award No. 2280. See also Awards Nos. 314, 1614, 1846, 2272, 3037. Measured by the rule, as thus construed, we do not think the work performed by Claimant was "necessary to the continuous operation of the Carrier".

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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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