

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that Mason P. Gordon, Claim Clerk at Fruitvale, California, shall be paid for wage loss sustained account failure of the Railroad to call him on Sunday, February 22nd, and on Monday, February 23rd, 1942 for the performance of work ordinarily and regularly assigned to and performed by his position.

EMPLOYEES' STATEMENT OF FACTS: Mason P. Gordon is assigned to position of Claim Clerk at Fruitvale, California. A portion of his regularly assigned duties consists of performing so-called "industry" work, such as receipting bills of lading for carding, sealing, tagging and listing carload shipments of glass jars outbound from Hazel Atlas Glass Co., located on a spur track near Fruitvale.

Position of Claim Clerk being filled by Gordon is not regularly assigned to perform service on Sundays or holidays. However, Gordon is frequently called on such days for the purpose of performing work such as described above.

On Sunday, February 22nd, and on Monday, February 23rd, 1942, it was necessary to receipt bills of lading for card, seal, tag and list carloads of glass jars for outbound movement from Hazel Atlas Glass Co. Gordon was available for a call performance of this work. An employee other than Gordon, and who does not perform this type of work ordinarily was called for the performance of this work.

POSITION OF EMPLOYEES: The following rules are cited from agreement between the parties, bearing effective date of October 1, 1930.

Rule 11. "Eight consecutive hours, exclusive of the meal period, shall constitute a day's work, except as provided otherwise in this agreement."

Rule 20. "Except as provided otherwise in these rules, time in excess of eight hours, exclusive of the meal period, on any day shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

Except when changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off; or where exercising seniority rights from

Carrier contends that there is nothing in the schedule which requires it to call any specific employe for the duties here involved. During the week-days, each of the employes, i. e., the Claim Clerk and Bill Clerk, performs some of the duties, and Carrier was applying the Schedule fairly in calling one of these employes to perform the duties on Sundays and holidays.

OPINION OF BOARD: Claimant holds the position of Claim Clerk. A portion of his regular assigned duties consists of so-called "Industry" work, such as receipting bills of lading for carload shipments of Glass jars outbound from Hazel Atlas Glass Co., and carding, sealing, tagging and listing same. On Sunday, February 22, and the following Monday which was observed as a holiday it was necessary that some of this work be performed.

Claimant was not regularly assigned to work on Sundays but on the dates in question he was available to be called. He had been called on other occasions. However, on these dates Carrier called another employe, a Bill Clerk, whose regular duties do not include this type of work.

We do not believe Claimant is entitled to the exclusive right to perform all of the overtime work of this kind as against every other qualified employe. Still, under the conditions existing in this case and as against an employe who ordinarily does not perform such work as part of his own regular work, we believe Claimant is entitled at least to a preference in performing the overtime work of his position. Such is the apparent holding under somewhat similar facts in Award 2282.

There is a relevant principle laid down by this Board in Award 2467, where we said:

"... it seems reasonable to conclude, predicated upon the essential nature of these contracts, that wherever they manifest an intention to impose a duty to perform certain work of the Carrier, there is thereby made manifest an intention to create a correlative right to perform the work."

It was pointed out in that Award that the claimant there was available and would have been obligated to respond to a notice or call to perform the required service. This Board applied the above principle later in Award 3271 where it is quoted with approval.

Accordingly, an award sustaining the claim is required.

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 Carrier violated the Agreement as contended by Petitioner.

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 April, 1947.