

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF St. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the Clerks' Agreement:

(1) The Carrier is violating the agreement by refusing to pay the Relief Parcel Attempt, relief checkman and Mail-Baggage handler at the rate of time and one-half for services performed on Wednesday, between the hours of 3:00 P. M. and 11:00 P. M. after having completed one eight hour tour of duty at 7:00 A. M. Wednesday; also

(2) Claim that Carrier is violating the agreement by refusing to pay the holder of this position, as described above, for services performed on Thursday from 8:30 A. M. to 3:00 P. M. at rate of time and one-half, after having completed one eight-hour tour of duty at 11:30 P. M. Wednesday; also

(3) Claim that Carrier is violating the agreement by refusing to pay the holder of this position, as described above, for services performed on Friday from 7:00 A. M. to 8:30 A. M., after having completed one eight-hour tour of duty at 5:00 P. M. on Thursday;

(4) Claim that Carrier now be required to pay the holder of that position, Elbert Stacy, to whom it was awarded on January 15, 1948, or his successor, the difference between the straight time rate and the time and one-half rate on dates shown, retroactive to the date violation began and until it is properly corrected.

EMPLOYES' STATEMENT OF FACTS: Under date of January 9, 1948, the Carrier issued bulletin No. 38, which is reproduced to show the hours of assignment and the duties of the position, as required by the bulletin rule in our agreement.

Bulletin 38

District 30

Jan. 9, 1948

Following position is advertised for bids in accordance with Rule 11 of the Clerks' Agreement. Applications must be prepared as specified in

OPINION OF BOARD: The Terminal Board of Adjustment of the Brotherhood asks that Claimant, Elbert Stacy, who, on January 15, 1948, was awarded the position of Relief Parcel Attendant, Relief Checkman and Mail-Baggage Handler at the Union Station, or his successor, be paid the difference between time and one-half and straight time, which was paid, for all services rendered between the hours of 3:00 P. M. and 11:00 P. M. on Wednesday, 8:30 A. M. and 3:00 P. M. on Thursdays, and 7:00 A. M. and 8:30 A. M. on Fridays of each week since being assigned thereto.

The facts out of which this claim arises are as follows: On January 9, 1948, Carrier bulletined the position of Relief Parcel Attendant, Relief Checkman and Mail-Baggage Handler, at its Union Station and, on January 15, 1948, assigned Elbert Stacy, the claimant thereto. This position had the following weekday assignments, Sunday being the off day: Monday as checkman from 11:00 P. M. to 7:00 A. M., Tuesday as parcel attendant and mail-baggage handler from 11:00 P. M. to 7:00 A. M., Wednesday as parcel attendant and mail-baggage handler from 3:00 P. M. to 11:30 P. M., Thursday as an addition to Crew 33 from 8:30 A. M. to 5:00 P. M., Friday as a parcel attendant and mail-baggage handler from 7:00 A. M. to 3:30 P. M., and Saturday as an addition to Crew 33 from 8:30 A. M. to 5:00 P. M.

Rule 39 of the parties' Agreement provides:

"Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of the meal period, on any day will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

Under comparable rules we have held that "day" means a period of 24 hours computed from the beginning of a previous assignment. See Awards 687, 2030, 2053, 2340, and 3258 of this Division.

Rule 2 of the parties' Agreement provides:

"These rules shall supersede and be substituted for all agreements, practices and working conditions in conflict herewith."

Rule 39 is plain and unambiguous and unless there was a mutually understood and agreed upon interpretation thereof contrary to the meaning of its language, effective with the adoption of the present Agreement, the claim as here made is meritorious.

Carrier contends that Rule 39 of the present Agreement was adopted with a re-affirmation of its interpretation to the effect that overtime is not applicable to the incumbent of relief positions calling for two shifts of work in a 24-hour period. It should here be mentioned that Rule 46 of the parties' Agreement, effective February 1, 1922, proposed Rule 42 considered in the negotiations leading to the present Agreement, signed February 20, 1945, and Rule 39 of this present agreement, which has been effective since April 1, 1945, are identical in language.

Insofar as here pertinent the record discloses that on January 20, 1943, the General Chairman of the Brotherhood wrote the Carrier with reference to certain conferences had dealing with the revision of the Clerks' Agreement and his understanding of the rules which were acceptable to the Carrier, which included proposed Rule 42.

In reply thereto, on January 29, 1943, Carrier, insofar as proposed Rule 42 is concerned, commented thereon as follows:

"While this rule is the same as the present one, and is satisfactory under our present agreed interpretation, I called attention to the fact that some reference should probably be made to relief positions requiring services on more than two tricks, which sometimes necessitates work in excess of 8 hours in a given 24-hour period. The rule can stand as agreed, with a re-affirmation of our interpretation."

Thereafter, on March 8, 1943, the General Chairman of the Brotherhood again wrote the Carrier with reference to conferences recently had and stating it was his understanding that certain rules, including proposed Rule 42, had been agreed upon. No mention is therein made with reference to Carrier's comment on proposed Rule 42 contained in its letter of January 29, 1943.

On March 30, 1943, Carrier wrote the General Chairman, at the conclusion of conferences had with reference to the new agreement, with reference to certain rules and the modifications thereof. This letter makes no specific mention of proposed Rule 42 but does contain the following paragraph:

"You will recall that I did not particularly like the language of many of the rules and that my action in agreeing to them was predicated on your acceptance of my understanding of the language of our practices thereunder, all as indicated in various letters or written memoranda furnished you from time to time during the negotiations."

There is no evidence that the Brotherhood ever agreed to or acquiesced in the interpretation which Carrier sought to place on proposed Rule 42, now Rule 39 of the present agreement, and that when the agreement was signed on February 20, 1945, to become effective on April 1, 1945, Rule 39 was adopted to be applied according to the meaning of its language, which is clear and unambiguous, and not subject to any understanding as the Carrier contends.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1949.