

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**

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the rules of the Clerks' Agreement at Cleveland, Ohio when on September 10, 1949, and subsequent Saturdays, the carrier permits and requires an employe not covered by the Clerks' Agreement to perform work on such days that was previously performed by employe holding position fully covered by the Clerks' Agreement, and,

That carrier shall by appropriate order compensate R. E. Fletcher, Clerk to Car Foreman for eight (8) hours each Saturday at time and one-half rate retroactive to September 10, 1949, and until work is restored to the Clerks' Agreement, and,

That any and all other employes adversely affected be compensated for wage loss sustained.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, the position of Clerk to Car Foreman was assigned to work six (6) days per week eight (8) hours per day. The duties on this position generally consisted of the following:

Give cripple car report to General Office, open company mail, gather up time cards from shop office, process time cards, checking and correcting same for errors, write in clocking for outside points where no time clock is used, put time cards in order according to account number, take time distribution of time cards for "cost of operation Report," place date stamp on each time card, report time in time book, compute, record and report "Daily Cost of Operation" to Division Car Foreman's Office. These reports consist of keeping a running record of daily cost to date in comparison with allotted appropriation in both dollars and hours for all points in this territory (Mantua, Randall, Union Street, E. 55th Street Shop, H. D. Yard and River Bed) including a total for entire territory. Also overtime report by cause for entire territory both monthly and weekly. Due to widespread of men working and time cards coming in from all places time card work takes till late afternoon. Other reports, filing reports, correspondence, daily car report, weekly and monthly reports. When Business Car is used check supplies on car. This office compiles and forwards four weekly reports, four semi-monthly reports which include a record of all time on each person covered by Washington Agreement, 52 monthly reports which prior to September 1st was worked on the first Sunday of each month. Employment files

As previously stated, the Foreman prepares a pencil list of time worked on Friday so that the Clerk when he reports on Monday can record the time and expense. Carrier attaches as its Exhibit "A", a typed copy of the pencil list as prepared by the Foreman covering time worked on Friday, April 28, 1950.

The Carrier has shown that since September 1, 1949, the Car Foreman's Clerk is performing all of the work that was being performed by him prior thereto. The changed method of securing the cost data is of no consequence. The point is—no exclusively clerical work has been assigned to others.

The Carrier protests against and objects to any claim for time and one-half rate where overtime is not actually worked. See Third Division Awards 4244, 4534, 4616, 4552, 4645, 4674, 4817 and 4828.

The Carrier maintains that there has been no violation of the Agreement; that the claim is not supported by the rules, therefore claim is without merit and should be denied in its entirety.

(Exhibit not reproduced).

OPINION OF BOARD: The System Committee of the Brotherhood makes this claim in behalf of R. E. Fletcher, Clerk to Car Foreman, and any and all other employees adversely affected.

The basis of the claim is that Carrier violated its Agreement with them, when, on September 10, 1949 and subsequent Saturdays, it required an employee not covered by their Agreement to perform work on such days that on other days was performed by employees holding positions covered by their Agreement.

It asks that claimants be compensated for eight hours on each of such Saturdays at time and one-half rate and that such compensation shall continue until this work is restored to employees under their Agreement.

The record shows that prior to September 1, 1949, the effective date of the parties' Supplemental Agreement putting into effect the 40-hour week, the position of Clerk to Car Foreman at Cleveland, Ohio, was a six-day position, Monday through Saturday, with Sunday as its day of rest. On and after September 1, 1949, it became a five-day position with the regular assignment for work from Monday through Friday, with Saturday and Sunday assigned as rest or relief days.

The dispute here involved relates to the work of the position being performed on Saturday by a Car Foreman, a position not covered by the Clerks' Agreement, when from Monday through Friday this work is assigned to and regularly performed by the Clerk to Car Foreman as part of his regularly assigned duties.

First, the Carrier raises a question as to the form of the claim as made, that is, that part referring to "any and all other employees adversely affected". It contends that this is in form a blanket or general claim and contrary to the provisions of Rule 42 of the parties' Agreement effective December 1, 1943, amended July 1, 1945.

This same question was raised by this Carrier in Docket CL-5087 and, by Award 5078 adopted therein, decided against the Carrier. We think such holding to be correct and here controlling. This Division has often held that a correct procedure in handling disputes is to permit the filing of general claims, when the question at issue operates uniformly upon a class of employees that is readily determinable, and for the continued violation, if such be a fact. This prevents a multiplicity of claims and permits the Board to settle the fundamental questions involved. See Awards 3687 and 4821 of this Division.

Factually the record discloses that on Saturdays, prior to September 1, 1949, the work of gathering statistical data from Friday's time cards for the cost of operations' record of the Carrier was performed by the Clerk to Car Foreman, Saturday being one of the days of his regular assignment. On Saturdays, after September 1, 1949, the work of gathering this statistical data from Friday's time cards was performed by a Car Foreman, a position not covered by the Clerks' Agreement. The Car Foreman put it in memorandum form so the Clerk to Car Foreman would have it on Monday to place in the cost of operations' record.

The Agreement here is applicable to certain character of work and not merely to the method of performing it. See Awards 864 and 3746 of this Division.

There is a sharp dispute as to whether the Clerk to Car Foreman performed the duties of processing the time cards, that is, making corrections, additions, notations or changes therein, prior to their being signed by the Foreman or whether the Car Foreman did this himself. In this respect it appears that certain notations, changes or corrections required the initialing thereof by the Car Foreman. Whether this work was done from Monday through Friday by the Clerk to Car Foreman or whether it was done on those days by the Car Foreman certainly should not be difficult to determine on the property.

With regard to the handling of the time cards, the Car Foreman had only the right to perform on relief days of the regularly assigned position of Clerk to Car Foreman the same work he performed on the regularly assigned days of that position. He would have no right to perform on relief days the work that the Clerk to Car Foreman performed on the regularly assigned days thereof. See Awards 3360, 3491, 4059, 4477 and 4866 of this Division.

The gathering of statistical data from Friday's time cards for the making of Carrier's cost of operations' record was work belonging to the position of Clerk to the Car Foreman and it was not proper for the Carrier to have the Car Foreman do it on Saturdays. Likewise, if processing these time cards on all the other days of the week was being done by the Clerk to Car Foreman, then it was improper for the Car Foreman to do it on Saturdays.

Carrier refers to Rule 1 (e) of the Agreement effective December 1, 1943, as amended July 1, 1945, as authority for what it did here. This rule is a modification of the scope rule of the parties' Agreement and has application in a proper situation of fact where the work is regularly being done. But it is not intended for nor does its language permit the Carrier to invoke its application to have others, outside of the Agreement, perform the work of a regularly assigned position on its relief days when such work is being performed by the employee assigned to such position as a part of his regular duties on the days of his regular assignment.

Under Rule 20-1 (d) of the Supplemental Agreement effective September 1, 1949, Carrier was required to give the regularly assigned occupant of the position of Clerk to Car Foreman preference. If such employee was not available, or the work was more than he could handle, then it was Carrier's duty, under the foregoing rule, to call some other qualified employee within the Clerks' Agreement to perform the work. See Awards 1630, 2388 and 4933 of this Division.

As to the time allowance for each Saturday the Carrier had this work performed in violation of its Agreement the record is not sufficient for us to determine. Admittedly it took not less than 45 minutes to prepare the memorandum of statistical data. Whether the processing of the time cards belong to the Clerk to Car Foreman must still be determined. If it does then the time it takes to do that work must be added. Whatever amount of time it takes to perform the work on Saturdays, which rightfully belongs to the Clerk to Car Foreman, is the basis upon which the claim should be paid to those entitled to the work. This has been hereinbefore set forth. It should

be paid in accordance with the provisions of the parties' effective Agreements. In no event should that be less than the contract minimum provided for a "call". See Rule 25 (c) of the Supplemental Agreement effective September 1, 1949.

Otherwise the basis of payment should be on a pro rata basis. Claimant was improperly denied the right to work on one of his relief days. The contractual right to perform work is not the equivalent of work performed insofar as the overtime rule is concerned. The penalty for work lost is the rate which an employe, if the work had been regularly assigned, would have received if he had performed it.

The claim is allowed for as long as the violation continues and to cease when the work is restored to those entitled to perform it.

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 Agreements.

AWARD

Claim sustained to the extent and for the amount as in the Opinion set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of November, 1950.

DISSENT TO AWARD 5117, DOCKET CL-5171

The Opinion states there is sharp dispute as to whether the clerk or the foreman processed time cards, i.e., making corrections, additions, notations, etc., prior to the cards being signed by the foreman.

Regardless of who performed this work the record contained no evidence as to the number of cards requiring or the time consumed in making corrections. In the absence of showing it is fair to assume this work was limited and required only a meager amount of time. In any event, the foreman, whose duty it was to approve time cards, had an inherent right to review and determine the correctness of time claims before approving them.

The fact that on Saturdays the foreman prepared a pencil list of employes performing service on Fridays, did not remove from the clerk the work of making the customary records and reports.

/s/ R. H. Allison
/s/ C. C. Cook
/s/ J. E. Kemp
/s/ C. P. Dugan
/s/ A. H. Jones