

Award No. 5419
Docket No. CL-5401

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on Saturdays, February 25, March 4, 11, 18, 25 and subsequent Saturdays, except Saturdays, April 15 and 22, until and inclusive of Saturday, April 29, 1950 it failed and refused and continued to refuse Clerk John L. Boyd, regularly assigned "Assistant Foreman", Seventh Street Warehouse platform, the right to perform the work of his position required by the Carrier to be performed on the claim dates, which was on days "not a part of any assignment" on which days there was no available extra or unassigned employee who would otherwise not have 40 hours of work that week, which work the regularly assigned employee Monday through Friday was entitled to perform on Saturdays, pursuant to Agreement provisions;
2. Assistant Foreman John L. Boyd shall be compensated for eight hours on each claim date at the punitive hourly rate of \$2.36 per hour, amount \$18.90 per day, account Carrier's action in violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The records of the force subject to the provisions of the Clerks' Agreement employed by the Carrier at its Seventh Street Freight Warehouse platform at the time the instant claims arose and during the period of the claim dates indicates that in addition to a number of Warehouse Platform Clerks, such as Check Clerks, etc., and a number of Warehouse Platform Laborers, there was also employed and maintained the following supervisory positions:

Position	Occupant	Seniority date	Rate	Hours	Rest Days
sen. Foreman	John Dunn	2/13/19	\$335.50 Mo.	8:15 AM-12:30 PM; 1:30 PM-5:15 PM	Saturday & Sunday
st. Foreman Inbound	J. Tritschler	10/16/19	\$ 12.60	7:30 AM-12N; 1 PM-4:30 PM	Sunday & Monday
st. Foreman Outbound	John L. Boyd	8/29/22	\$ 12.60	8 AM-12N; 1 PM-5 PM	Saturday & Sunday
enl. Super- isor Platform)					

Numerous Board Awards make it clear that even if it should be concluded that Boyd was held off this work in violation of the Agreement there is no basis for payment of punitive rate as claimed in Item 2 of the Statement of Claim and payments would not be due for dates for which no claims were filed during the period specified in Item 1 of the Statement of Claim.

(Exhibits not reproduced.)

OPINION OF BOARD: It is conceded the Carrier has a large force of freight handlers at its Seventh Street Freight Warehouse platform, St. Louis, Missouri, and that in supervision thereof during the dates in question it employed one General Foreman and four Assistant Foremen with assigned hours at different periods during the overall hours of 7:30 A. M. to 5:15 P. M., each such position working eight (8) hours per day, five days per week. General Foreman John Dunn had Saturday and Sunday as rest days, likewise Assistant Foreman Boyd (outbound), the claimant here, and Assistant Foreman O'Shaughnessy (outbound). Assistant Foreman Tritschler (inbound) and Assistant Foreman R. S. Dunn (outbound) have Sunday and Monday as rest days. All four of these Assistant Foreman positions were bid in by the present incumbents pursuant to bulletin advertising such positions for bids subsequent to their restoration following the termination of the train and engine service employees' strike. This bulletin stated the duties of the three Assistant Outbound Foremen positions, including claimant's, consisted of "Assist in general supervision of platforms." It specified the duties of the Inbound position were "To supervise the unloading of Inbound cars and the loading of Columbia trailers; making trap cars."

The Carrier states and, since it is not denied, we must assume that following inauguration of the 40-Hour Week it discontinued acceptance and delivery of less carload freight and made its basic freight house service a Monday through Friday operation but found it necessary to continue to work some forces on Saturdays to handle interline merchandise and the freight of car loading companies; that to protect the Monday through Friday service it maintained positions as required by the volume of traffic moving; that on Saturdays there was a lesser amount of supervision needed, fewer cars to load and unload, fewer bills of lading and waybills to handle as well as a decrease in the routing of shipments into cars according to destination blocking; that therefore on such days it worked an Assistant Foreman position, the duties of which were a combination of some of the Monday through Friday duties of Assistant Foreman, Inbound Foreman, and Route Clerk and consisted, in addition to regular Assistant Foreman duties, of the duties of directing the handling of the inbound freight and the routing and blocking of waybills on outbound freight.

Just what happened to Assistant Foreman (outbound) R. S. Dunn on the Saturdays involved does not appear from the record but it is not claimed that his position was blanked or that he lost any time on such days so that fact or possible questions arising with respect thereto are immaterial and of interest only for purposes of keeping the record straight.

Nor does the record disclose who worked the alleged Assistant Foreman position on Saturdays from September 1, 1949, the effective date of the 40-Hour Week Agreement, until Saturday, February 25, 1950. All we have on that point is the Carrier's statement that it did so. However, it is clear that such position was worked each Saturday, February 18, 1950 to April 29, 1950, a total of eleven Saturdays, and that on all dates mentioned in the claim Check Clerk M. B. Smith, regularly assigned Tuesday through Saturday, with hours 7:00 A. M. to 4:00 P. M., was permitted to leave his regular assignment and fill what Carrier describes as the Saturday Assistant Foreman position from 8:00 A. M. to 5:00 P. M. A fair inference to be derived from the record is that Smith performed similar work on like hours during such interim on the several Saturdays not listed in the claim as filed. It is equally clear that on the days in question the Carrier filled Smith's regular position by calling regularly assigned Check Clerk Murray on the rest day of his position and paid him for such service at the punitive

rate. Also it is certain that beginning May 6, 1950, the Carrier commenced, and since that date has continued, to use General Foreman John Dunn for performance of the work formerly assigned to Smith.

The record is lengthy and many of the extended arguments advanced by the parties are extraneous and beside the point. We shall therefore direct our attention to what we consider the salient issues involved.

At the outset it should be noted that although verbose the essence of the claim as filed with this Board is for a violation of rules of the Agreement, hence it will be so treated.

In defense of its action the Carrier relies chiefly upon Rule 9 (a) of the current Agreement relating to temporary appointments and argues at great length the position in question was a temporary one, known to be of less than thirty calendar days. Its own statements to which we heretofore referred, to say nothing of its action in continuing to work the position under the present assignment to Foreman Dunn, refute this argument. Besides, it is obvious such position was worked by Smith for eleven Saturdays over a period of time far exceeding the thirty calendar days referred to in the rule. There is no merit to this contention and it is rejected.

The Employees rely principally upon Rule 25½ of the Agreement which reads:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee."

We cannot agree with the Employees' position the record discloses the work required on Saturdays was no part of any assignment. There can be no doubt that in view of the factual situation existing at the time it was confronted with the heretofore described operational problem, resulting from putting the five day week into effect, the Carrier had the right to establish such relief assignments as were necessary to do the work in question. Rule 21 (2) (a) of the current Agreement provides therefor and we have so indicated in prior decisions (see Award No. 5195) wherein similar rules were involved. Treated as a relief position the work in question was performed on a day which was a part of an assignment, hence the Carrier's action did not result in a violation of Rule 25½ because it is only applicable when the day involved is **not** a part of an assignment. The fact the position may not have been properly established can constitute a violation of another rule of the Agreement but that affords no sound ground for a claim the day was no part of any assignment within the meaning of that term as used in Rule 25½.

However, the conclusion just announced does not mean a denial award is required. The record makes it crystal clear the Carrier's action violated other rules of the current Agreement in at least three particulars, namely, by failing to bulletin the new position, by changing Smith's starting time and by shifting him from his regularly assigned position. Any one of these violations suffices to sustain a penalty award and to deny this claim, restricting our decision, as we would have to do, to the single ground the employee named therein had failed to show he was personally entitled to the work, whether it be for lack of proper qualifications or for some other reason, would only lead to a multiplicity of claims and additional expense to the parties. Moreover, recognizing its primary function is to settle disputes involving fundamental differences between the parties to an Agreement, this Board has held many times that the claim on behalf of a particular individual is merely an incident which is of no concern to the Carrier where—as here—no claim is made on behalf of any other employee and the allowance of the claim as filed will preclude another claim for the same work. We think the instant case is one in which the foregoing principles should

be applied. Therefore, we hold the claim should be sustained as a penalty for violation of the rules of the current Agreement but that reparation should be limited to the pro rata rate under a well established principle (see Award Nos. 3955 and 4963).

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 Agreement was violated.

AWARD

Claim (1) sustained as indicated in the Opinion and Findings.

Claim (2) sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 8th day of August, 1951.