

Award No. 5580

Docket No. CL-5511

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

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 effective Sunday, June 26, 1949, it eliminated the Sunday "overtime" work of the position of Yard Clerk at Collinston, Louisiana theretofore assigned 5 P.M. to 9 P.M.; 10 P.M. to 2 A.M., six days per week, Monday through Saturday with a fixed and regular requirement that the occupant of the position work every Sunday the same hours as on other days, and subsequent to June 26, 1949 the work previously performed by this Clerk on Sunday consisting of handling of mail and baggage off and on Trains Nos. 822 at 6:35 P.M., 132 at 7:20 P.M. and 103 at 10:15 P.M., work of calling the third brakeman for north-bound freight trains (required by Arkansas law) was removed from the scope and operation of the Clerks' Agreement and the Carrier utilized employees outside this Agreement, that is, employees subject to the Agreement of another craft to perform the clerical work here involved, in violation of Scope Rule 1 and other pertinent rules;

2. Clerk J. N. Fontenot, seniority date August 28, 1941, Group 1, Little Rock—Louisiana Division Clerks' Station and Yards seniority roster, occupant of the Yard Clerk position at Collinston referred to in "1" hereof, shall be compensated for five hours at the punitive rate of \$1.51 per hour, amount \$7.55 per day, Sunday, June 26, July 3, July 10, July 17, July 24, July 31, August 7, August 14, August 21, August 28, September 4, and continuing thereafter each Sunday except during the period September 9 to October 24, when the clerical positions at Collinston were abolished account the Railroad being inoperative due to strike of the running crafts, until July 1, 1950, when the clerical work here involved, except that of calling the third brakeman, was moved from Collinston, Louisiana to Monroe, Louisiana and there assigned to employees subject to the provisions of the Clerks' Agreement seven days per week.

EMPLOYEES' STATEMENT OF FACTS: Collinston, Louisiana is located approximately 175 miles south of Little Rock, Arkansas on the Little Rock-Louisiana operating division of the Missouri Pacific Railroad. Collinston is the junction point with a branch line of the Railroad of this same operating

Rule 5—Seniority Districts. There is no dispute about the seniority districts set up under this rule. None of them were changed in any way.

Rule 6—Vacancies and New Positions. With no vacancies or new positions in the situation we see no possible application of this rule.

Rule 25—Overtime and Calls. Prior to June 26, 1949, the date of beginning of these claims the position involved was a seven-day position. Under the provisions of Rule 26 the Carrier could have used a rest day relief employe or an extra or furloughed employe to protect the work on Sundays. This claimant had no prior rights to the work. The fact that he was being worked on the seventh day of the week did not give him any rights to it. The Carrier could have assigned the work to another employe on any Sunday it might have chosen to do so. This would, of course, have required payment to such employe—pro rata to an assigned rest day relief employe, punitive to an unassigned employe. There was no obligation to use this claimant.

Rule 43. Effective Date and Changes. The Carrier made no changes in effective date or provisions of the Clerks' Agreement. How this rule could have any bearing on this case is beyond our comprehension. As clearly indicated in the rule, changes require action by both parties. How can it be said that one of them acting alone can change a rule? An action by the Carrier falls within one of three categories. It either (a) complies with a rule, (b) violates a rule or (c) is not covered by the agreement. It cannot in any wise change a negotiated rule.

The attempt of the Employes to show application of some of the above rules is in our opinion so far-fetched it is baffling to know how to make answer. They have not made any effort to explain how they consider those rules violated and we hold that they must do so in order to require or permit payment of claims. Your Board has said so in Award 4011.

With reference to related rules we hold that such a reference cannot properly be considered support for any claim. If the Employes have confidence in their interpretations of the rules we think they should state their cases so we will know what they mean. We think your Board agrees with our position. In Award 5077 you said that something more must be demanded of a claim than a bald statement that an agreement has been violated and that the claim should put in issue the precise rules involved in the alleged violation and the claimant's theory of the claimed violation. It is the Carrier's position that no rule of the Clerks' Agreement, either among those designated by number, those related thereto or any others have been violated by the Carrier in this case.

(Exhibits not reproduced).

OPINION OF BOARD: It appears that prior to June 26, 1949, the duties assigned to the second trick yard clerk position at Collinston were performed by the occupant of the position seven days per week by either a seven day assignment or a six day assignment and a call on Sunday. After that date, the position was assigned six days per week and some of the duties assigned to and customarily performed by the position were performed on Sundays by employes of another craft or class.

By his assignment to the position, the claimant was guaranteed the preferential right to work the position on each day the duties thereof were required to be performed unless rest day relief were afforded in accordance with the rules. Hence the claim should be sustained.

Our Award No. 5579 governs determination of this claim after September 1, 1949 when the Forty Hour Week Agreement became effective.

The Sunday work in the past had been performed on a call basis much of the time and the claim is apparently on a call basis because it is for

five hours at time and one-half rate. The Call Rule (25-d) provides for a minimum of three hours' pay for two hours' work or less. We find no evidence of record to justify an award of five hours and hence the claim should be sustained only for the minimum guaranteed for a call, or three hours' pay.

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

The Carrier violated the Agreement.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of December, 1951.

DISSENT TO AWARD NO. 5580, DOCKET CL-5511

The dissent to Award 5579 applies to Award 5580 to the extent stated in items First and Second.

/s/ R. H. Allison

/s/ R. M. Butler

/s/ J. E. Kemp

/s/ C. P. Dugan

/s/ A. H. Jones