

Award No. 5623

Docket No. CL-5604

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Francis J. Robertson, 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 on the dates stipulated on Saturdays and Sundays subsequent to August 1, 1950, pursuant to Interstate Commerce Commission Service Order No. 856, and the revision issued by the Commission it was required to make the yard check and yard check report for demurrage purposes, which clerical work is performed Monday through Friday by E. L. Foerster, Cashier, Warrensburg, Missouri, it utilized an employe outside the Clerks' Agreement and who is covered by the wage agreement of another craft to perform the work;

2. Cashier E. L. Foerster shall be paid a "call," two hours at punitive rate of \$2.328, account Carrier's action on

Saturday, September 16 and Sunday, September 17, 1950

Saturday, September 23 and Sunday, September 24, 1950

Saturday, September 30 and Sunday, October 1, 1950

Saturday, October 7 and Sunday, October 8, 1950

and on all subsequent Saturdays and Sundays until the violations of Agreement are discontinued and the claims satisfied account Carrier's action in violation of Scope Rule 1, Rule 2, seniority and overtime and related rules of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The station force subject to the scope and operation of the Clerks' Agreement at Warrensburg, Missouri during the period when the claims here involved arose was:

ion	Rate	Occupant	Assigned Hours	Rest Days
ier	\$12.42	E. L. Foerster	8 a.m.-12 n.; 1 p.m.-5 p.m.	Saturday and Sunday
k Clerk	11.40	Wm. S. Robertson	7 a.m.-11 a.m.; 12 n.-4 p.m.	Saturday and Sunday

E. L. Foerster is listed on the Group 1, Station and Yards, Clerks, seniority roster of the Eastern Division with a date of December 1, 1914, while Wm. S. Robertson is listed on the same roster and in the same group with a seniority date of September 1, 1923 (1).

whole, but Award 3858 and other similar awards mentioned above seem to express the opinion that a Carrier may not do in part that which it is fully authorized to do in whole.

Please bear in mind that the Carrier does not presume to encroach upon the five day work week. As long as a clerk's position is in existence it may not be reduced below five days per week except in weeks in which holidays occur, but in the case at Warrensburg the Carrier merely abolished the clerical assignment on Saturdays and Sundays and gave the insignificant remaining clerical work to a telegrapher which is a procedure that many awards uphold as proper with respect to entire clerical assignments. And after this was done the clerical positions at Warrensburg still had their five-day work-weeks which is just what the Employees asked for.

The Carrier has been following its understanding of the principles of the Board's awards dealing with situations of this kind. Where the work required is of a substantial quantity and in excess of the capacity of the telegrapher to perform without interference with his telegraphic duties we think it is proper and do call the clerk on Saturday or Sunday to perform it, just the same as we put on regular clerical positions when clerical work at stations exceeds the capacity of the telegraphers. Considering the purpose of the 40-Hour Week Agreement and the policies expressed by Board awards, it is the position of the Carrier that there is no violation of the Clerks' Agreement in having the telegrapher make the 6793 Report at Warrensburg on Saturdays and Sundays when such work does not even fill out his own assignment to say nothing of requiring the services of an additional employee.

(Exhibits not reproduced.)

OPINION OF BOARD Effective September 1, 1949, at Warrensburg, Missouri, Carrier reduced two clerical positions to five days per week with Saturday and Sunday as rest days. Thereafter until August 1, 1950 it dispensed with the checking of yard and making of a 6793 Report on Saturdays and Sundays. After August 1, 1950 the Interstate Commerce Commission issued an order requiring Carriers to include Saturdays and Sundays in computing demurrage on freight cars. That required the performance of the work of checking the yard and making Form 6793 on certain Saturdays and Sundays. That work was performed by a telegrapher on the days for which claim is made. The work of checking yard and compiling Form 6793 for many years has been done by an employee covered by the Clerks' Agreement at Warrensburg and is work which is performed by the Claimant as part of his regular assignment Monday through Friday.

The principle applicable to a determination of this claim has been set forth in numerous awards of this Board. While it may be true as contended by Carrier that at other points on the system this type of work is performed by telegraphers as part of their regular assignments, the fact remains that at this location such work had increased to such an extent that it became necessary to assign a clerk. Under such circumstances when clerical work has been assigned exclusively to the clerical position during the week that same work may not be assigned to employees not under the Clerks' Agreement on the assigned off days of the clerical position. (See Awards 4477, 2052, 3425, 3825, 3858, 4832.) The Forty-Hour Week Agreement did not change the application of that principle. It follows that the Carrier's action was violative of the Agreement and the claim must be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1952.