

Award No. 5912

Docket No. CL-5907

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Carrier violated currently effective Agreement governing the hours of service and working conditions of the Employees when it failed to include the two designated rest days—Saturday and Sunday of each week—of Report Clerk Position No. 36 at Yale Yard Office, Memphis, Tenn., on Sunday, August 6, 1950, and all intervening Sundays August 20 to November 12, 1950, as part of a regular relief assignment, or in lieu thereof, utilizing the service of an available extra or unassigned employee who otherwise did not have forty hours of work in the particular weeks involved in this claim, or calling the regular employee, C. L. Hoffman, and

(2) The regular occupant of the Report Clerk's position No. 36, Mr. C. L. Hoffman, be compensated for wage loss sustained, namely eight hours' pay at rate of time and one-half for Sunday, August 6, 1950, and on intervening Sundays between August 20 and November 12, 1950, inclusive.

EMPLOYEES' STATEMENT OF FACTS: Included in the clerical force in the Yale Yard Office at Memphis, Tenn., there was established a position of Report Clerk No. 36, rate \$12.37 per day, a five day position with Saturday and Sunday as designated rest days.

This position was bulletined as a Yard Clerk position, six days per week, on May 1, 1941 and was assigned to Mr. C. L. Hoffman on May 12, 1941. (See Employees' Exhibits 1 and 2.) Some time in 1947, exact date unknown, the title of the position was changed from "Yard Clerk" to that of "Report Clerk," Mr. Hoffman remaining thereon as the regularly assigned occupant of the position.

The duties assigned to this position include checking of industries in the vicinity of what is known as Line A, National Battery Co. and National Battery Co. Lead and making various reports.

As a result of certain ICC Service Orders, it became necessary, effective August 1, 1950, that these duties be performed seven days per week. Accordingly, there being no qualified extra clerk available who had less than forty hours in his work week, Mr. Hoffman was used to perform this work on each Saturday August 5, 1950 to November 11, 1950, inclusive, and other

OPINION OF BOARD: The claimant was employed as a report clerk. He held Position No. 36 with Saturday and Sunday as rest days. Report Clerk Job No. 43 worked Friday through Tuesday with Wednesday and Thursday rest days. Yard Clerk Job No. 37 worked Tuesday through Saturday and Yard Clerk Job No. 57 worked Monday through Friday.

Report Clerk No. 36 had as one of his duties the checking of industries and tracks along what was known as Line A and making reports in regard thereto.

I.C.C. Service Order No. 856, effective August 1, 1950, required the Carrier to secure checks of industrial tracks on Saturdays and Sundays. As a result of this order, the Carrier found it necessary to give the claimant a call on several Saturdays.

I.C.C. Order No. 866, effective September 20, 1950, required that car delay reports be made on Saturdays the same as Monday through Friday. These car delay reports were not required on Sundays.

After I.C.C. Order No. 866, the Carrier used the claimant on Saturdays, but not Sundays. The work complained of was performed on Sundays by Report Clerk No. 43.

Rule 47 of the January 1, 1946 Agreement, Rule 36½ (e) of the 40 Hour Week Rules and Rule 43 (g) of the 40 Hour Week Rules are cited by the Organization as being pertinent to this case.

The Organization maintains that the work of checking Line A on Sundays, as required by I.C.C. Rule 856, was work of the claimant's position and work to which Report Clerk No. 43 was not entitled.

We cannot agree with this contention. The fact that the claimant was assigned to perform this work during the week does not restrict it to the individual Report Clerk.

The Organization urges that the Carrier is bound by rules to provide a regular relief worker, or in lieu thereof, utilizing the services of an available extra or unassigned employee who otherwise did not have forty hours of work in the particular weeks involved in this claim, or to call the claimant.

The work schedule provided that a Report Clerk would work Sundays. This was Report Clerk Job No. 43 and he performed the same type work as the claimant.

The work, here involved, was general yard work and was not restricted to the claimant. It was work that consisted of making reports and inspection. It was not performed by a lower rated employee, but by one of equal rating. Neither was this an instance where the work was performed by one of another craft.

The purpose of the forty hour week was not to give employees the same amount of work with considerable more overtime pay. Rather, it was for the reduction in number of hours worked per week without a loss in net earnings to the employee.

The Forty Hour Week Agreement provides for several methods of handling work on the sixth and seventh days. Rule 43 (g) provides that an extra or unassigned employee who will not otherwise have 40 hours of work will be used and that in all other cases the work will be given to the regular employee. This rule is conditioned on the work being on a day which is not a part of any assignment. Such is not the present case. Here the work was performed as a part of the assignment of Job No. 43.

Rule 47 of the January 1, 1946 Agreement was not violated by the Carrier. The duties performed on Sundays by Report Clerk No. 43 were not restricted by their very nature. They were clerical duties which Report Clerk No. 43 was entitled to perform on Sundays as part of his regular assignment.

Rule 36½ of the Forty Hour Week Rules provides for the establishment of regular relief assignments to do the work necessary on rest days of assignments in six or seven day service or combinations thereof. The first paragraph of the Rule, however, provides that the work weeks may be staggered in accordance with the Carrier's operational requirements.

We are of the opinion that the Carrier acted within its rights under the terms of Rule 36½ (a) of the Supplemental Agreement with effective date of September 1, 1949.

During the period of time covering the claim from its first day until the Carrier changed Job No. 36 to a seven day position, the schedule of work was not altered with the intention of staggering the work.

The situation, as we see it, was that Report Clerk No. 43 was regularly assigned to perform report clerk duties on Sundays. The work of checking Line A was report clerk work and could be performed by Report Clerk No. 43 as long as the work could be performed during the hours of his regular assignment along with the work which he normally performed.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 7th day of August, 1952.