Award No. 6021
Docket No. CL-5996

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the rules of the Clerks' Agreement at Ruston, Louisiana, when on September 1, 1949, the position of Baggageman-Porter was filled on two rest days by assigning the Group 3 work to Ticket Clerk, a Group 1 employe.

(2) T. A. Woodard, Group 3 employe, regularly assigned Baggageman-Porter, period September 1, 1949, to February 2, 1951, and regularly assigned Trucker subsequent thereto, be paid eight (8) hours at punitive rate attached to his regular position as time lost account not being called for service that was performed by others on his two rest days of each week from September 1, 1949, to date irregular assignment is corrected.

(3) Ticket Clerk G. B. Higginbotham and/or others who have filled Ticket Clerk position since September 1, 1949, be additionally paid for time worked, approximating an hour and one-half on Sundays and one hour on Mondays (designated rest days of each week of the Baggageman-Porter) from September 1, 1949 to date the irregular assignment is corrected.

EMPLOYES' STATEMENT OF FACTS: Superintendent C. H. Hardwick, in a letter addressed to the Agent at Ruston, Louisiana, file 25000, issued instructions, as follows:

> "Effective September 1, 1949, Baggage-Porter will be off Saturday and Sunday. The handling of mail and baggage will be performed by the Ticket Clerk. There will not be any janitor work to be done by Ticket Clerk."

The Agent changed the rest days of the Baggageman-Porter to Sunday and Monday.

The Superintendent on January 26, 1951, sent the following message to Ruston, Louisiana:

There is nothing in the rule examined, or by any other rule in the Agreement called to our attention, which requires the Carrier to maintain positions, irrespective of need, merely to have a place within a particular group to which work of an abolished position may be transferred."

In further support of their claim, the employes rely on Rule 49, paragraph (c) which reads:

"(c) Employes will not be required to suspend work during regular hours to absorb overtime."

The rule has no application because the ticket clerks are not required to suspend work during regular hours. The handling of mail and baggage is as much a part of their regular assignment as the selling of tickets. From the cancellation of the two Illinois Central trains, shown in Carrier's Statement of Facts, and the small amount of work involved, shown in the joint check on the property (Carrier's Exhibit "A") it is evident the ticket clerk had sufficient time to perform these duties.

In summation, the carrier has shown that under the rules of the 40-hour week agreement and the Letter of Understanding it was proper to assign the parties a five-day week without the use of a relief employe. The carrier has further shown that the Scope rule and Rule 49(c) do not support the employes' claim.

Inasmuch as there has been no violation of the agreement, the carrier respectfully petitions the Board to deny the claim.

It is hereby affirmed that all data herein contained is known to the employes representative and is hereby made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, the part of the Station Force at Ruston, Louisiana, with which this claim is concerned consisted of a Ticket Clerk (Group 1 employe), a Baggageman-Porter and a Trucker, (both Group 3 employes). The Ticket Clerk worked seven days per week and was paid overtime for Sundays. The Baggageman-Porter, who handled head-end work of passengeer trains, was also assigned seven days per week and was paid overtime for Sundays.

In arranging its forces to conform with requirements of the 40-Hour Week Agreement the Carrier made changes in assignments at Ruston as hereinafter indicated. Effective September 1, 1949, the Ticket Clerk position was continued as a seven day position Monday through Friday, with rest days of Saturday and Sunday, relief being provided by a Relief Ticket Clerk on such days; the Baggageman-Porter assignment was changed to work five days Tuesday through Saturday, with rest days Sunday and Monday, with no relief assigned on rest days; and the Trucker who had formerly been assigned to a six day position was assigned to a five day position Monday through Friday, with rest days Saturday and Sunday. As of the same date the Ticket Clerk, Group 1 position, was assigned to handle the head-end work of all passenger trains while the Baggageman-Porter was off duty on Sunday and Monday. No Group 3 employe was assigned to perform work on Sunday or Monday.

Effective February 2, 1951, the Baggageman-Porter position was abolished. Thereupon, Claimant Woodard, the former occupant of that position, exercised his seniority to take the Trucker position. At that time the duties of handling the head-end work were re-arranged, the Trucker and the Ticket Clerk each being assigned to do head-end work on two trains each from Monday to Friday, while the Ticket Clerk was assigned to do all such work at the station on Saturday and Sunday.

Effective March 12, 1951, the assignment of head-end work was again changed in such manner that the Trucker performed all of such work from Monday to Friday and the Ticket Clerk all of it on Saturday and Sunday.

Having stated sufficient facts to give a general but nevertheless overall factual picture of the events giving rise to this controversy, it can now be stated that no question is raised, no dispute exists, and no claim is made with respect to the handling of head-end work from Tuesday to Saturday, from September 1, 1949, to February 2, 1951, nor from Monday to Friday after the date last mentioned, and that the instant claim has only to do with contentions to the effect the Carrier violated the Agreement by assigning the Ticket Clerk to fill the two Group 3 positions just mentioned and by requiring the occupant thereof to handle the head-end work of such positions on Sunday and Monday (the rest days of the Baggageman-Porter) from September 1, 1949, to February 2, 1951, and on Saturday and Sunday thereafter (the rest days of the Trucker).

The principal contention advanced by the Organization in support of the claim is that the work here involved was Group 3 work which, under the scope and other seniority rules of the Agreement as interpreted by this Division of the Board, could not be transferred to a Group 1 position by the Carrier in conforming with the provisions of the 40-Hour Week Agreement. This requires consideration of applicable rules of the Agreement.

Turning to the current contract we note Rule 1 (the Scope Rule), after setting forth 4 separate Groups of employes, provides that the purpose and intent of the rules of the Agreement is to segregate the various groups (Groups 1, 2, 3 and 4) of duties as far as conditions will permit; Rule 5 establishes districts over which employes may exercise seniority and provides that a separate roster is to be made for each group listed in Rule (Group 1, 2, 3 and 4); Rule 24 recognizes that employes filing applications for positions bulletined on other districts or on other rosters will be given preference on a seniority basis over non-employes and/or employes not covered by the rule; Rule 28 provides that employes promoted from one seniority group to another, as covered by Rule 1 of the same seniority district, will retain and continue to accumulate seniority in the group from which promoted; and Rule 31 provides positions shall not be transferred from one seniority district or roster to another without advance notice to employes affected and opportunity afforded for conference.

The foregoing rules, in our opinion, suffice to definitely establish that separate seniority prevails by groups on the property of the Carrier under the existing contract and compel a conclusion that this case must be considered and determined in the light of the well established rule that in the absence of rules in Agreements clearly to the contrary seniority rosters by districts or by groups prevent the Carrier from turning the work of employes holding seniority on one District and/or Group Seniority Roster over to those holding seniority on another District or Group Roster even though employes are covered by the same Agreement. For decisions, to which we adhere, announcing and applying the foregoing principle where—as here—separate and distinct group rosters are involved see Awards 1306; 2585; 3582; 4385; 4543; 5091; 5413; 5590 and 5895. Decisions relating to seniority rosters by districts and adhering to the same principle may be found in Awards 973; 1808; 2354; 3656 and 4076.

The undisputed facts of record make it clear that prior to the changes made on September 1, 1949, the head-end work at Ruston had been regularly assigned to and performed by the occupant of the Baggageman-Porter position, which was a seven day position, and that on all dates here in question such position, likewise the position of Trucker, have been group 3 positions filled by employes holding seniority in that Group while the Ticket Clerk position has been a Group 1 position and filled by employes of that Group.

Thus it becomes apparent the paramount question for decision in this case is whether, notwithstanding the Scope Rule and Seniority Rules heretofore mentioned and our decisions construing the force and effect to be given them with respect to the crossing of group seniority lines, there are other rules in the current Agreement permitting the Carrier to take the work in question from the occupant of a Group 3 position to which it had been regularly assigned and give it to the incumbent of a Ticket Clerk position whose seniority rights were limited to a Group 1 seniority roster.

The Carrier contends there are at least two rules of the Agreement, also an understanding between the parties, permitting the action on which the Organization bases the claim.

The gist of the first contention advanced by Carrier in support of its position is that Rule 46½, providing work weeks may be staggered in accordance with the Carrier's operational requirements, permits the crossing of group seniority lines. The fallacy in this contention appears from the language of subdivision (a) of the Rule itself which definitely indicates that assignments for regular positions are limited to employes of the same class in the same seniority district. Another reason for rejecting this contention is that if it were to be sustained it would result in a new concept of many of the fundamental principles of seniority so vital to the integrity of collective bargaining agreements. We fail to find anything in Rule 46½ or elsewhere in the rules of the Agreement, agreed upon for purposes of conforming to provisions of the 40-Hour Week Agreement, which has the effect of changing the principle governing the crossing of group or district seniority lines as announced in the Awards to which we have heretofore referred, some of which it is to be noted were handed down by this Board after the effective date of such Agreement.

Next it is argued that an understanding reached between the parties as of July 15, 1949, in connection with a supplemental agreement executed on the same date, relating to proper application of Paragraphs (d) and (e), Article 11, Section 1 of the 40-Hour Week Agreement, now Paragraphs (d) and (e) of Rule 46½ of the final Agreement executed by the parties on August 1, 1950, contemplates and authorizes action such as is here in question. Resort to this understanding as it appears in the record fails to reveal anything which, in our opinion, warrants or permits the construction the Carrier seeks to give it. Another sound reason for rejection of its arguments on this point appears from the fact that the subsequently executed argument of August 11, 1950, which expressly provides that it supersedes the July 15, 1949 Agreement, neither refers to such understanding nor provides that seniority group or district lines can be crossed in connection with the staggering of work weeks. Under such circumstances, even if Carrier's construction of the July 15, 1949 understanding had merit this Board would not be justified in now reading into the Agreement something which the parties did not see fit to include therein.

Finally Carrier contends its action is not in violation of the Agreement because of the language of the Scope Rule providing "the purpose and intent of these rules is to segregate the various groups of duties **as far as conditions will permit,** . . ." This argument assumes conditions disclosed by the record did not permit segregation by groups. In view of the fact conditions prior to the advent of the 40-Hour Week Agreement permitted segregation by groups and the record is devoid of facts showing a change therein at the time of the involved action we doubt if the record justifies this assumption. Even so we need not labor the point. Conceding use of the phrase above emphasized relaxes any rigid rule of classification it was not intended to and does not defeat the very purpose for which the classifications were made.

We have examined divers Awards cited by Carrier wherein this Board has said work of the kind here involved did not belong exclusively to Group 3 employes. Without taking the time to point out wherein they are

distinguishable it can be said such Awards are based on factual situations calling for the application of different principles and that no one of them can be regarded as holding the action herein complained of would not be in violation of the current Agreement under the existing facts and circumstances.

We are convinced the facts of this case establish Carrier's action in assigning the work of a Group 3 position to a Group 1 position resulted in violation of the Scope and Seniority Rules of the Agreement. This, under our decisions, calls for the imposition of a penalty. Under the confronting facts and circumstances we feel compelled to hold that penalty should be a day's pay at the pro rata rate for the rest days on which the involved Group 3 work has been assigned to Group 1 employes.

With respect to Paragraph 3 of the claim, and without laboring the reasons responsible for our decision, it suffices to say that in the light of all the existing facts and circumstances we are unwilling to hold that Higginbotham was required to suspend work during his regular hours to absorb overtime and are not disposed to allow reparation in the nature of a double penalty because the work in question was assigned to him in violation of other rules of the Agreement to which we have heretofore referred.

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 the Agreement was violated.

AWARD

Claims 1 and 2 sustained to the extent indicated in the Opinion and Findings. Claim 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of November, 1952.