

Award No. 6158

Docket No. CL-5931

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD CO., SAN ANTONIO, UVALDE & GULF RAIL-
ROAD CO., SUGARLAND RAILWAY COMPANY, ASHERTON
& GULF RAILWAY COMPANY**

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

(a) The Carrier violated the Clerks' Agreement at Palestine, Texas, in January, March, April, May and June 1951, when it called a junior regularly assigned employee to work Yard Clerk position on days that position is unassigned to work, and failed to call senior employee W. A. Handorf. Also

(b) Claim that Mr. Handorf be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. S. Price is assigned to a five day position of Yard Clerk at Palestine, Texas, with hours 3:00 P. M. to 11:00 P. M. Since his position works only five days per week his rest days are Saturday and Sunday, and when work is required on those days it constitutes "work on unassigned days" as defined in Rule 37 (c-6).

Mr. Leroy Blackman, with seniority date of February 8, 1950, is assigned to a seven day position of Yard Clerk with hours 7:00 A. M. to 3:00 P. M. His rest days are Monday and Tuesday when he is relieved by a swing clerk.

W. A. Handorf, with seniority date of August 24, 1949, is assigned to a relief position with rest days Sunday and Monday. His Saturday assignment is 11:00 P. M. to 7:00 A. M. Sunday.

On Sundays, January 7, 14 and 21, 1951, and on Saturdays, March 10, 24; April 7, 21; May 5, 26; June 2, 9, 16, 23, 1951, it was necessary that the 3:00 P. M. to 11:00 P. M. Yard Clerk position be worked. This constituted "work on unassigned days" as defined in Rule 37 (c-6).

to the Carrier—is materially pertinent in the Board's determining the merit, or rather lack of merit, in the situation here involved.

Other awards rendered by your Board, although not so closely related to the circumstances in this case as those referred to above, but which, we believe, are not without significance, are: 72, 213, 1425, 2436, 3603, 3727, 4050, 4086, 4208.

With respect to Rule 37 (c-6) upon which the Employees base this claim, it is the position of the Carrier that, interpreted under the rules of English Grammar, Rule 37 (c-6) is not mandatory in any respect—not even as to use of the regular employe when there is no extra or unassigned employe available. The rule is one elliptical sentence and, in the absence of a verb in the last clause, such clause has the meaning that would be expressly stated if it read “in all other cases it may be performed by the regular employe”. It would have been easy to make the clause mandatory if such was the intention; but, as the rule stands, there is not a mandatory word in it.

The Carrier might well say that this rule does not **compel** the use of any particular employe for work of the nature here involved and therefore could not have been violated. The most that could be said is that, not having used either of the employes designated in the rule, the Carrier merely waived the privilege of doing so.

When consideration is given to the following facts, which can not be successfully challenged:

(1) Claimant Handorf is not the party who was entitled to perform the work in question;

(2) No claim or protest was submitted by claimant, either during or subsequent to the period for which claim is made;

(3) The situation forming the basis for this claim ceased to exist some six weeks prior to the date the General Chairman called the matter to the Carrier's attention and subsequently filed claim;

It is believed your Board will concur in the position of the Carrier that the claim is without basis under the provisions of the current working agreement relied upon by the Employees (Rule 37 (c-6)), and under previous rulings of the Board, hereinabove pointed out, the claim is without merit, and should, therefore, be denied.

All matters contained in this submission have been the subject of correspondence and/or conference between the parties.

(Exhibits not reproduced).

OPINION OF BOARD: W. L. Price was employed as a yard clerk on a five-day assignment, Monday through Friday, with rest days Saturday and Sunday.

It was necessary to work the above assignment Saturdays or Sundays on thirteen days, from January 7, 1951, through June 23, 1951. No extra or unassigned men were available. Neither Price, the regular employe, nor the Claimant, W. A. Handorf, the next in seniority to Price, was called to work on the Saturdays and Sundays here involved. The Carrier called Leroy Blackman, who had less seniority than the Claimant.

In July, 1951, these facts came to the attention of the Carrier, and the Carrier immediately corrected the situation.

The Organization discussed this claim with the Carrier for the first time on August 10, 1951, and filed this claim on August 13, 1951.

The Carrier contends that the Claimant is not the person entitled to perform the work, and therefore he has no basis for this claim.

"Rule 37 (c-6). Work on Unassigned Days," provides:

"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 (40) hours of work that week; in all other cases by the regular employee."

There being no extra or unassigned employee available, the regular employee, Price, was entitled to perform the work. When the Carrier failed to call Price, it was obligated under the rules to call the next senior available employee, who was Handorf.

Under the Carrier's contention, any clerk could be called regardless of seniority. This is forbidden by the agreement under the seniority rule.

The fact that Price has failed to file his claim and abandoned it, does not keep the Claimant, Handorf, from filing a claim for the violation. The Carrier would have to pay for the violation only once.

The Carrier next contends that the Claimant did not make claim during the period of time when the contract was being violated; and the claim was not mentioned or discussed or filed until approximately six weeks after the Carrier, of its own volition, corrected the violation. Therefore, the Carrier contends there is no basis for the claim. With this we cannot agree. There is no time limit rule here involved, nor is there any showing of laches or estoppel on the part of the Claimant. The fact that the Carrier corrected its own violation did not stop the Claimant from filing a claim. There is no showing that the Claimant knew of the violation before the discussion of it with the Carrier or that he acquiesced in it. The violation, correction, and filing of the claim all took place within eight months.

Under the facts, the agreement was violated, and the Claimant was entitled to be paid at the pro rata rate.

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 sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of March, 1953.