

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

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

(a) The Carrier violated the rules of the Clerks' Agreement by compensating employees who held the position of Janitor-Baggage-man-Trucker at Stockton, California, on a call basis for service performed on rest days, from September 1, 1949, to on or about September 24, 1950.

(b) Mr. I. J. Dinkel and all other employees who have held the position of Janitor-Baggage-man-Trucker at Stockton, California, shall now be compensated for the difference between a minimum of eight hours at the rate of time and one half and time actually allowed on each rest day subsequent to September 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: The position of Baggage-man-Janitor, Stockton Passenger Station, had been maintained as a seven-day assignment for many years prior to September 1, 1949. As shown in Clerks' Circular No. 161-47 dated September 24, 1947, (Employees' Exhibit "A") the occupant of this position worked from 6 A. M. to 3 P. M., meal period 11 A. M. to 12 noon, with Thursday as his relief day. The duties and qualifications of this position as shown on the circular were as follows: "Applicant must have knowledge of baggage tariffs, checking local and interline baggage and would be required to do janitor work." Subsequently the duties were changed to also include the trucking of freight in the warehouse.

A regular relief assignment, which relieved the occupant of the position of Baggage-man-Janitor on Thursday, his rest day, was last advertised in Clerks' Circular No. 207-48 dated December 31, 1948 (Employees' Exhibit "B"). Some time prior to the issuance of Circular 207-48 (Employees' Exhibit "B") the hours for the position of Baggage-man-Janitor were changed from 6 A. M. to 3 P. M. with a one hour meal period, to 5 A. M. to 1:30 P. M. with a meal period 9:30 A. M. to 10:00 A. M.

Some time prior to September 1, 1949, the duties of the position of Baggage-man-Janitor at Stockton Passenger Station were changed to include the trucking of freight in the warehouse and the title of the position was changed by the Carrier to Janitor-Baggage-man-Trucker.

In anticipation of the inauguration of the 40-Hour week, effective September 1, 1949, a communication was addressed by Agent A. D. Prato, under

Brotherhood of Railway and Steamship Clerks, etc., signed at San Francisco, California on August 9, 1950, effective September 1, 1949.

"Therefore, I claim a minimum of eight (8) hours at the rate of time and one-half as provided for in the above agreement under Rule 20(g), Section 3, which reads, 'An employe who is notified to regularly perform service on his assigned rest day, or days, shall be entitled to a minimum of eight (8) hours at the rate of time and one-half.'

Respectfully yours,

/s/ Irvine J. Dinkel."

POSITION OF CARRIER: It is Carrier's contention that Dinkel was not notified to regularly perform service on his rest day and that he voluntarily accepted service on a call basis as senior employe in the class of work and, therefore, was properly compensated under Rule 20(g), Paragraph 1. When Dinkel commenced work on his position, he informed the Agent he wanted all of the overtime he could get and that he would take a call on his rest days as he needed the money. At no time was Dinkel required or forced by Carrier to work on his rest day nor was he "notified to regularly perform service on his rest days" as the facts in the example of Davison clearly show to be a requisite under Rule 20(g) Paragraph 3. Had Dinkel not accepted the call, other employes were available to perform the service on a call basis.

In his letter of October 6, 1950, Dinkel based his claim on "Inasmuch as I was called to perform service as Janitor at Stockton, California under Rule 20(g) . . .". In adding Paragraph 3 to Rule 20(g), in no way was Paragraph 1 deleted, and Dinkel's service clearly comes under the provisions of Paragraph 1. Being "called to perform service" does not constitute being "notified to regularly perform service", and the letter is a requisite for compensation under Paragraph 3.

This claim is directly opposite to the facts and circumstances surrounding Davison's situation:

(1) Where Davison was forced to work when he or no other employe wanted the service, Dinkel was senior and voluntarily accepted a call on his rest day.

(2) Where Davison was notified to regularly perform service on his rest day, Dinkel was never so notified.

Paragraph 1 of Rule 20(g) provides that service rendered by an employe on his assigned rest day will be paid for under the Call Rule. Paragraphs 2 and 3 cover specific situations where an employe performing service on his rest day will receive a minimum of eight hours, and unless an employe is relieving an employe assigned to such day or is notified to regularly perform service, service on rest days is properly compensated under Paragraph 1.

The facts in this dispute clearly indicate that Dinkel was not fulfilling an assignment nor was he notified to regularly perform service on his rest day. It is Carrier's position that Dinkel was properly compensated under Paragraph 1, Rule 20(g), and urges that this claim here presented be denied.

All of above has been presented to the employes.

(Exhibits not reproduced).

OPINION OF BOARD: Rule 20(g)3, agreed to August 9, 1950, and effective September 1, 1949, provides:

"An employe who is notified to regularly perform service on his assigned rest day, or days, shall be entitled to a minimum of eight (8) hours at the rate of time and one-half."

The record discloses that the occupant of the position of Janitor-Baggage-Trucker at Stockton, California, on August 29, 1949, was instructed by the Agent, in writing, that effective September 1, 1949, he was assigned to work Monday through Friday, with rest days on the position of Janitor-Baggage-Trucker of Saturday and Sunday, and on his rest days the occupant of the position would, on a call basis, work baggage on Train No. 1 and do janitor work at the Passenger Station and Freight Office.

The record fails to disclose that these instructions have ever been cancelled.

Rule 20(g) is controlling and the claim should be sustained for the period September 1, 1949, to on or about September 24, 1950.

For the reasons herein given, claim should be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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 has been violated and claim will be sustained in accordance with the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1954.