

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

**NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY**

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

(a) The Carrier violated the terms of the Clerk's Agreement when they arbitrarily changed the assigned work week of the position of Yard Clerk, Third Trick Little Ferry Jct., from Monday thru Friday to Sunday thru Thursday thereby blanking this position on Fridays, and turned over the clerical work traditionally performed by the Clerk on this day to the Yardmaster who is not covered by the Clerk's Agreement.

The Carrier shall now compensate Mr. T. C. Daley, incumbent and claimant, and/or his successors, for 8 hours pay at time and one half for Fridays July 11, 18, 25, 1952 and all subsequent Fridays this violation continued.

(b) The Carrier violated the terms of the Clerk's Agreement when, after establishing the position of Yard Clerk, Third Trick Little Ferry Jct. Sunday thru Thursday, they then changed it back to Monday thru Friday thereby blanking the Clerical position on Sundays, which they established by their initial move, and turned the Clerical work necessary over to the Yardmaster who is not covered by the Clerk's Agreement.

The Carrier shall now compensate Mr. T. C. Daley, incumbent and claimant, and/or his successors, for 8 hours pay at time and one half for Sunday, September 21, 1952 and all subsequent Sundays this violation continues.

(c) The Carrier violated the terms of the Clerk's Agreement when on Saturdays, August 30, October 4, 11, 18 and 25, 1952, which were rest days for the Third Trick Clerk, the Carrier worked a full crew with the exception of the Third Trick Clerk at Little Ferry Jct. and the Clerical work was performed by the Yardmaster who is not covered by the terms of the Clerk's Agreement.

The Carrier shall now compensate Mr. T. C. Daley, incumbent and claimant, and/or his successors, for 8 hours pay at time and one half for each of the above specified dates.

such assistance was necessary, it would seem that by the same token they could ebb back directly to the original position when the necessity for the assistance no longer existed, provided the duties so involved in the ebb and flow were such as were indigenous to that position—normal and incident to it.' See also Award No. 931."

Similarly we quote from Award No. 3735:

"* * * Nor can we agree with the proposition that the turning back to the chief dispatcher of the work taken from him, (he being of an excepted class not subject to the agreement), constitutes a transgression of those principles. As earlier stated there is no specific particular type of work that can be said to be peculiarly work of an assistant chief dispatcher. On the contrary, his work consists of, when his position is necessary at all, the handling of that excess of the chief dispatcher's work which the latter is unable to perform; thus when this excess disappears the work of assistant chief dispatcher disappears. Though some of the same class of work which he did perform may thereafter continue to be performed by the chief dispatcher, it must be remembered that chief dispatcher work is not subject to the agreement except only as an excess thereof may be assigned to a position of assistant chief dispatcher that may be established. Therefore, it is only an excess of such work which ever becomes subject to the dispatcher's agreement, and when the excess vanishes there is no such work covered by the dispatcher's agreement. This same principle is more generally stated in Award 1314 * * *."

Should your Honorable Board sustain any portion of the employee's claims, Carrier contends that while claims are made on basis of time and one-half any award should be only at pro rata rate, and attention is respectfully called to Award No. 5708 which reads:

"* * * The contractual right to perform work is not the equivalent of work performed insofar as the overtime rule is concerned. The penalty for work lost is the rate which an employee, if the work had been regularly assigned, would have received if he had performed it. See Awards 5117 and 5240 of this Division. Under this principle the claim should be allowed at the pro rata rate."

However, the Carrier contends that for the reasons given herein there have been no violations of any provisions of the agreement, in its failure to use Clerk T. C. Daley to perform work on the third trick at Little Ferry Junction Yard, and that the work performed on this trick on the dates in question by Yardmaster is work that is normal and incident to the position of Yardmaster and it is respectfully submitted that all claims in this case should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to the effective date of the 40-Hour Week Agreement the third trick Yard Clerk position at Little Ferry Junction classification yard was a six day assignment. Thereafter it was reduced to a five day assignment, Monday, through Friday. On July 7, 1952 the Carrier notified the incumbent that, effective July 11th, his work week would be Sunday through Thursday with Friday and Saturday rest days. On September 30th the work week was changed back to Monday through Friday with Saturday and Sunday rest days.

That change to a work week of Sunday through Thursday with Friday and Saturday rest days was a clear violation of Rule 20 (b) which provides as follows:

"(b)—Five-Day Positions.

On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday."

Consequently claim (a) must be sustained. In line with our consistent holding that the proper penalty rate for time not work is pro-rata, it will be sustained at the pro-rata rate.

It seems to be conceded that there was some clerical work performed on Saturdays and Sunday by the Yardmaster, an employee not subject to the Clerk's agreement. The Carrier asserts that it did not amount to more than 2½ to 3 hours of work, and contends that the recognized yardstick for the establishment or continuance of a clerk's position is that there be four hours or more per day of the character set forth in Article 1, Rule 1, Group 1 of the agreement. The language of the rule clearly shows that such four hour provision is the criterion for differentiating between group 1 and group 2 positions. We have repeatedly held that such a rule does not justify a carrier in assigning clerical work of less than four hours duration to employees not covered by the agreement.

The carrier contends that the clerical work performed by the yardmaster was incidental to his position and thereby could properly be performed by him. Even though the yardmaster position existed prior to the clerk's position and the yardmaster then performed clerical work incidental to his position, once a clerk's position is established, the work falls within the scope of the clerk's agreement and cannot be removed unilaterally except upon abolishment of the clerk's position in accordance with the agreement. Rule 20½ (e) governs the performance of such work when required on rest days of the position and it was a violation of the agreement to use the yardmaster, not under the clerk's agreement, to perform such rest day service.

Consequently we find that claims (b) and (c) should be sustained at the pro-rata rate, except as to holidays which shall be at the time and one-half 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

The agreement was violated.

AWARD

Claims (a), (b) and (c) sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of August, 1955.