

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter—Referee

PARTIES TO DISPUTE:

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

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Waukegan, Illinois when, on September 3 and 4, 1949 and subsequent Saturdays and Sundays, the Carrier permitted and required an employe not covered by the Clerks' Agreement to perform work on such days that was previously performed by an employe holding a position fully covered by the Clerks' Agreement; and

That Carrier shall, by appropriate order, compensate Theodore Liberty, Roundhouse Clerk, for eight (8) hours on each such Saturday and Sunday at the rate of time and one-half, retroactive to September 3 and 4, 1949 and until such work is restored to employes within the scope of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, the position of Roundhouse Clerk, Waukegan, Illinois, was worked seven (7) days each week, eight (8) hours per day. Mr. Theodore Liberty, present incumbent, was assigned the position seven (7) days each week, eight (8) hours per day. The duties of this position generally consisted of the following:

Mark up crew boards, call crews, record layoffs, call replacements*, file crew work reports, prepare the lay-off book, change crew register sheets, check and mail time cards, prepare out-of-service report, diesel locomotive Form 747 which is a monthly report but condensed daily, sort and mail oil tickets, and prepare daily report of engines worked.

*The calling of yard engine crews, layoffs and replacements are made by telephone; and as road crews are housed in a bunkhouse, the calls are made in person.

There has been no change in the duties of this position since September 1, 1949 from Monday through Sunday, inclusive, as the operational functions of the railroad remained the same as they were prior to September 1, 1949.

Beginning Saturday, September 3, 1949, the Carrier employed L. Kluska to work this position on Saturdays and Sundays only. Mr. Kluska was a student at the Waukegan Township High School and was employed on Satur-

reasons which preclude that conclusion. This, we may add, is true notwithstanding Claimant's contention to the effect there are several Awards of the Division holding that Crew Calling work when specified in the Scope Rule may not be removed from the Agreement unilaterally and assigned to employees not covered by its terms. Much could be said on this subject but we are not inclined to labor its intricacies or the Awards dealing therewith. It suffices to say that Referee Boyd reflects the view of the present Referee when in Award No. 4977, on which Claimant relies, he clearly and definitely indicates there may be outside conditions which deprive employees of the exclusive right to all clerical work, even under such a Scope Rule. Here, as we have indicated, the outside reason was implied agreement between the parties under a well and long established practice."

In conclusion, it is the position of the Carrier that the claims for the period September 20, 1949, to June 12, 1950, should be denied for the reason that the Saturday and Sunday clerical work in dispute properly was performed by an available extra or unassigned employee as required by the controlling agreement. The claims for the period subsequent to June 12, 1950, should be denied for the reason that no work exclusively that of the class or craft of clerical employees was performed by any other employee than Claimant on the dates claimed.

All data contained herein has been discussed with the Organization either verbally or in writing.

OPINION OF BOARD: Prior to September 1, 1949, Carrier assigned a position of Roundhouse Clerk, seven days each week, at its Waukegan, Illinois, roundhouse facility. Claimant worked this position seven days each week until the advent of the Forty Hour Week Agreement when it was assigned to him on a five day basis, Monday through Friday, with Saturdays and Sundays as rest days. Beginning on Saturday, September 3, 1949, Carrier used one L. Kluska to perform the Saturday and Sunday rest day work until he resigned on June 12, 1950. The alleged improper use of Kluska constitutes the violation of the Agreement first relied upon. On Saturday and Sunday, June 17 and 18, 1950, claimant worked the position and was correctly paid the rest day rate therefor. Thereafter it is alleged that the rest days were worked by the General Foreman, the Foreman and a Boilermaker Helper on days set forth in the submissions of the parties. The use of these three employees is alleged to be in violation of the Agreement and constitutes what we shall designate as the second part of the claim.

The record shows that Kluska at the time he was used was a student at Waukegan Township High School. According to his sworn statement, he was unavailable for work for the Carrier except on Saturdays and Sundays, and that it was the understanding between him and the Carrier that he would be available only for Saturday and Sunday work. Under such an arrangement, Kluska was not a bona fide employee and his use was improper under the previous holdings of this Board. Award 6999 and Interpretation No. 1 thereto. The record further shows that from September 20, 1949 to October 17, 1949, Kluska was used on a night shift to relieve claimant who was off on account of sickness. The Carrier asserts that this qualified Kluska as an extra employee who could be properly used thereafter on the rest day work under the rule announced in Award 6854. We point out, however, that for a person to have any employee relationship under the Agreement, he must be a bona fide employee. It is true that, ordinarily, when a person improperly used in rest day relief service attains seniority or an employee status thereafter, he becomes qualified to perform tag-end rest day work. But in order to invoke this rule, the employee must be a bona fide employee. His use in relief on a temporary vacancy does not qualify him unless the condition precedent exists, to-wit, that he is a bona fide employee. This is supported and fully explained in Award 6999 and Interpretation No. 1 thereto. We are required to say, therefore, that Kluska was never qualified to perform

the Saturday and Sunday rest day work and there being no available extra or unassigned employees who would otherwise not have 40 hours of work that week, it belongs to the regular employee as provided by Rule 42 (f), current Agreement. This portion of the claim is sustained at the pro rata rate, that being the rate to be paid for time lost and not worked.

With reference to that part of the claim for the period after June 12, 1950, a different situation exists. There is no valid claim during this period on days that claimant was used on his rest days at the rest day rate, and the Organization does not so contend. The record shows that on or about June 12, 1950, Carrier reduced claimant's regular assignment from a seven day to a five day position. The Organization asserts that the work of the position on Saturdays and Sundays thereafter, except as heretofore noted, was performed by the General Foreman, Foreman and a Boilermaker Helper, all being employees outside the scope of the Clerks' Agreement. The Carrier contends that they performed no work which exclusively belonged to the Clerks and that no violation occurred because of their use.

The record shows that the roundhouse facility at Waukegan is operated around the clock. There has never been, however, more than one roundhouse clerk assigned. For many years the roundhouse clerk was assigned on a seven day basis. The Carrier asserts that it was able to so rearrange the work so that the necessary clerical work could be performed on one five day assignment. The question for determination is whether there was work on Saturdays and Sundays which was exclusively that of Clerks.

The three main items of work performed on the rest days of claimant's position which are alleged to support a violation relate to answering and using the telephone, keeping diesel oil records, and arousing crews resting in a bunk house in close proximity to the facility. The answering and use of the telephone involved the ordinary calls that came to the facility, including calls that were personal to the employees. The oil records mentioned were made up when it was necessary to supply diesel engines with fuel by the employees performing the work and were then collected for record making purposes. The arousing of employees at the bunk house, which the employees refer to as crew calling, arising out of the unusual situation at this point. The Carrier maintains a bunk house for employees laying over for return trips. They are personally aroused when the time comes for them to depart on their return trip. It is not crew calling as that term is generally used in the industry. The record shows without contradiction that all of this work is done by claimant when he works his regular assignment. On the two tricks on which no roundhouse clerk is assigned it is done by other employees working at the facility including the General Foreman, the Foreman, and the Boilermaker Helper previously referred to. This work has been done by employees other than Clerks since a point of time long before a Clerks' Agreement was negotiated on this property. It is plain from the record that this work was so performed long before the advent of the Forty Hour Week Agreement without objection on the part of the Clerks. It has been considered and treated as work incidental to the work of employees other than Clerks at this point. The record shows that this same work was so performed on claimant's rest days after June 12, 1950. We fail to see how complaint could properly be made to the performance of this work on rest days when it is not in excess of that performed on the shifts when a roundhouse clerk has never been assigned. Many positions on a railroad perform incidental work which is in its nature clerical that is not in violation of the Clerks' Agreement. Such work is not the exclusive work of Clerks. The work here in question appears to be such work, especially since it has been so performed in this manner for so many years without any objection. We necessarily conclude that the work in question is not the exclusive work of the Clerks. If the work performed exceeds that customarily performed by roundhouse employees other than Clerks, quite a different result would be required. The evidence contained in the record will not sustain the contention of the Clerks that there was a violation in this respect. In addition to what we have said, the record shows that on Saturdays and Sundays falling at payroll periods when clerical

work had to be performed in excess of that performed by other roundhouse employes, claimant was called to perform it on his rest days at the time and one-half rate. Such work belongs to the Clerks and the use of a Clerk is required. No basis exists for an affirmative award on this portion of the dispute.

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 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 17th day of November, 1955.