

Award No. 7188

Docket No. CL-7114

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**

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: The claim of the Carrier is that the following claims, which were submitted to the Carrier by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, are without merit:

"Claim of Mr. C. M. Hilton, Storehelper, Shreveport, Louisiana, for eight hours pay at overtime rate on his assigned rest days beginning on February 15, 1953 and for each succeeding Saturday and Sunday until this rules violation is corrected, account Carrier working Car Department repair track forces, and assigning and permitting these Car Department repair track forces to issue materials on Mr. Hilton's assigned rest days." (Carrier's File T-27940)

"Claim of R. E. Norwood, Storehelper, Shreveport, Louisiana, for eight hours pay at overtime rate on his assigned rest days beginning on February 15, 1953 and for each succeeding Saturday and Sunday until this rules violation is corrected, account Carrier working Car Department repair track forces, and assigning and permitting these Car Department repair track forces to issue materials on Mr. Hilton's assigned rest days." (Carrier's File T-27942)

CARRIER'S STATEMENT OF FACTS: At Shreveport, Louisiana, the Carrier maintains Hollywood Yard. In it the Stores Department maintains a roundhouse store or locomotive store. About a quarter of a mile from that locomotive store, but also in Hollywood Yard the Carrier maintains a freight car shop and repair tracks. In the vicinity of the car shop and repair tracks, is what is known as the freight car substore.

This substore includes various platforms, bins and stockpiles in that general area, containing supplies which are there to be taken and used by the car department forces. These supplies are located and arranged, in so far as possible, in an orderly manner, so as to be conveniently available to the car forces as needed by them. The substore includes a small storeroom which contains material cases, floor platforms, and some records, and which is nor-

performed on those days just the same as on the other work days of the week, Monday through Friday inclusive.

It is affirmed that all data herein submitted in support of Claimants' position have been submitted in substance to the Carrier and made a part of the claim.

OPINION OF BOARD: This dispute arose at Carrier's freight terminal at Shreveport, Louisiana. The Carrier maintains a roundhouse at this point with a limited force of mechanics and helpers who are assigned five days each week. There are also a number of seven day assignments working around the clock in servicing and making running repairs to motive power. Adjacent to the roundhouse there is a mechanical storehouse in charge of a storekeeper and a small force of storehouse employees who handle materials and supplies as needed by mechanical employees. Claimant R. E. Norwood occupies the position of Storehelper at this mechanical storehouse. In this same terminal, Carrier has a freight car shop and repair tracks located about a quarter of a mile from the mechanical storehouse. A freight car substore is located at this point. It includes various platforms, bins and stockpiles which are used by Car Department forces. It includes a small storeroom (substorehouse) which contains material cases, floor platforms and some records which is ordinarily kept locked when no store employee is on duty. A key to this storeroom has been kept available, generally in the office of the rip track foreman. Claimant C. M. Hilton holds the position of Storehelper at this substorehouse. The substore consists of ground storage on open platforms, in open bins, and on the ground, in addition to supplies and materials contained in the storeroom. These materials are available at all times to Car Department employees working on the rip track and in the train yard. These employees have been required to help themselves to materials and supplies as needed, leaving a requisition therefor. The rip track is operated five days a week only and employees working thereon are assigned Monday through Friday, 7:00 A. M. to 4:00 P. M. Claimant Hilton is assigned during the same hours. When the storehelper is off duty, other Car Department employees working three shifts help themselves to all materials and supplies needed. This method of operation appears to have existed for many years. Prior to the advent of the forty hour week (September 1, 1949) car repairmen working on the rip tracks were assigned six days a week with Sunday their rest day. The storehelper was so assigned during that period.

It is the contention of the Organization that the Carrier violates the Agreement when it directs or permits Car Department track forces to "issue" supplies and materials on claimants' rest days without using a storehouse employee. The claim is for a day's pay for each day that this alleged violation occurs.

The record shows that it is the duty of employees in the Stores Department to order and obtain supplies for use by the Car Department, place them in the substore area, and stack and arrange them for the convenience of Car Department employees. They receive requisitions from Car Department employees for materials and supplies used and keep the records with reference thereto. It is their duty to maintain proper stocks of supplies at the substore and to perform other work pertaining thereto as directed. They take stock inventories and transport all materials and supplies to the substore in maintaining the stock level.

Car Department employees obtain the material and supplies needed and transport them to the point of use. They determine their own needs and carry out the material and supplies from the substore. They are required to leave a requisition but otherwise all records are kept by the store employee during the period of his assignment. Such materials and supplies are at all times made available to the Car Department employees in one way or another. It is not a transfer of possession from the Stores Department to the Car Department on an over the counter basis. Delivery to the Car Department appears to be made when materials and supplies are transported to the substore and conveniently arranged for the use of Car Department employees.

Thereafter the duty of the Stores Department is to keep the records, check the stock inventory and augment depleted items. When a store employee is on duty, it is evident that he performs some minor work which is otherwise performed by Car Department employees picking up supplies and materials. No complaint is made concerning this natural overlapping on minor incidental duties.

It has never been the practice to maintain a Stores Department employee during all the times Car Department employees are working. With a small force operating during night time hours and on Saturdays and Sundays, Car Department employees obtain when they need in the absence of a store employee. A key to the locked storeroom is given to a Car Department foreman so that materials can be obtained from this source of supply when needed. This indicates that the physical control of the stock of materials and supplies at the substore is in the Car Department subject to the duty of stores employees to keep a check on the quantity used. Awards 3216, 5391. We necessarily conclude that the stores employees do not issue materials and supplies at this substorehouse and that Car Department employees draw out such materials and supplies as needed, it being work which belongs to the latter under the cited decisions of this Board. The record does not establish, therefore, that Car Department employees were performing any work on the Saturdays and Sundays in question which belonged to the claimant storehouse employees. Award 7081. The only possible work performed by Car Department employees which could be construed to be that of stores employees is the making of requisitions for materials and supplies used. This is not the exclusive work of any craft. Almost every position makes requisitions for materials, supplies, tools and equipment. It is incidental to a position except when the Agreement specifically provides otherwise. In the instant case, it has been a long continued practice for Car Department employees to make requisitions for materials and supplies. A claim cannot be supported on the basis that the making of requisitions is the exclusive work of store employees in the present case.

When the 40-hour week was put in effect on September 1, 1949, the Storehelper position at the substore was assigned seven days per week, Monday through Friday, with Saturdays and Sundays as rest days. A regularly assigned relief man performed the rest day work. On October 8, 1950, the position was assigned as a five day position. The Organization contends that this was a violation of Rules 26½ (d) and (e), dealing with Seven Day positions and Regular Relief Assignments. It is the contention of the Organization that the same storehouse work existed after October 8, 1950, that had existed theretofore. The Carrier on the other hand states that fewer men in the Car Department were being worked on Saturdays and Sundays and that this justified the reduction of the assigned seven day position to one of five days. The record shows that running repairs were made around the clock seven days per week. Prior to the 40 Hour Week Agreement, regular car repair forces worked Monday through Saturday, with only a small force working on Sundays. After the 40 Hour Week Agreement, they worked Monday through Friday, with a small force working on Saturdays and Sundays. The Carrier assigned the storehelper to work Mondays through Saturdays prior to the 40 Hour Week Agreement. After the 40 Hour Week Agreement, and until October 8, 1950, the storehelper was assigned Monday through Friday with assigned relief on Saturdays and Sundays. The record shows some fluctuation in the number of Car Department employees used on Saturdays and Sundays but, other than that, it does not show a reduction of work brought about by a change of circumstances justifying the establishment of a five day assignment in place of the pre-existing seven day assignment. We think, therefore, that the facts shown by this record do not sustain Carrier's action of October 8, 1950, in creating the five day assignment and abolishing regular rest day relief on Saturdays and Sundays at the substore. The work is either there to be performed as before or it is being improperly performed by Car Department employees.

There are many issues and claims discussed by the Organization which may be evidentiary, but which we cannot dispose of by this award. Some

involve matters not raised on the property, some involve claims postdating this dispute, and some are such that they be subject to affirmative defenses on the part of the Carrier. The case was brought here by the Carrier to have the issues resolved in its statement of claim. We confine ourselves to those issues. This does not mean, however, that the Organization may not properly contend that the claims cannot be sustained on grounds raised by it so long as it relates to the same alleged violation.

The Carrier asserts that the Carmen's Organization has rights involved in this case and that a third party notice is required to give this Board jurisdiction. Without discussing the question of notice, we find from the facts that the Carmen have no interest because there is no valid claim that Carmen are doing any work belonging to clerical employees or that clerical employees are doing any work belonging to Carmen. The issue before us arises solely under the Clerks' Agreement.

Carrier asserts that a double claim has been filed, that is, that Claimants Hilton and Norwood are claiming the same work. The record makes it clear that Claimant Hilton claims only the Saturday work and Claimant Norwood the Sunday work only. While the right of Norwood is secondary to that of Hilton, the latter having voluntarily relinquished his claim to the Sunday work, the claims can be allowed as made. The Carrier is required to pay but once for each violation and the manner of handling is therefore immaterial to its interests since both claimants have direct or contingent rights to make the claims.

The claims will be sustained at the pro rata rates, 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

That the Agreement was violated to the extent stated in the Opinion.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of November, 1955.