

Award No. 7190
Docket No. CL-7350

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 CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(a) Carrier violated the rules of the Clerks' Agreement when, on December 19th and 20th, 1953 failed to call Clerk D. D'Ambrosio and improperly permitted Checker P. Wnetkowski and General Foreman A. Soncha to perform claimant's clerical duties, and

(b) Clerk D'Ambrosio be compensated eight (8) hours pay for each day at the punitive rate account Carrier's failure to call the claimant to perform his duties.

EMPLOYEES' STATEMENT OF FACTS: Clerk D'Ambrosio's regular assignment was from Monday to Friday with rest days of Saturday and Sunday.

On Saturday, December 19th, and Sunday December 20th, 1953, a large day force was worked on the docks and it was necessary to set up "freight on hand" sheets in order to have an efficient operation. These "freight on hand" sheets are normally prepared by Clerk D'Ambrosio of the Jersey City Lighterage office force, but on these two days were written up by Checker P. Wnetkowski and General Foreman A. Soncha who were ordered out to cover their regular assignments, and not that of Clerk D'Ambrosio.

POSITION OF EMPLOYEES: The Employees contend that Clerk D'Ambrosio should have been used to prepare the "Freight on Hand" reports on the dates specified in the claim and statement of facts, because he was the regular Employee assigned to the duties in connection with the preparation of these reports at Jersey City Lighterage.

In support of their position, the Employees will make reference to certain rules of the Agreement bearing an effective date of December 15, 1952.

The operation at Jersey City Lighterage is predominately a daylight operation with a large force of office employees, gangs and foremen working from 8:00 A. M. to 4:30 P. M. There are a limited number of office employees, gangs and foremen working from 4:00 P. M. to 12:30 A. M. to follow-up unfinished work from the 8:00 A. M. shift. On the third shift there is but one assigned

work sheets as copies of the Freight on Hand Sheets were given to the dock force.

Exhibit "A" is the original of the Freight on Hand Sheet that had been typed up by claimant on Friday. This was kept by the clerk in the office as a master copy and an examination of this Exhibit shows that all of the necessary information for December 19 and 20 has been inserted on this record. It was the intent of management in not calling claimant that the Dock Foremen would likewise use their copies of this report on Saturday and Sunday. It will also be noted that the only additional cars listed are a few at the bottom of the last sheet that were hand-written on the report. Rather than to work from the typed sheets already prepared on the 18th by Claimant, Exhibit "A," the Boat Checker apparently elected to prepare hand-written work sheets, those for December 19th being attached as Exhibit "C." While there was no necessity for the preparation of these "work" sheets, the fact that it was done did not take any work away from claimant and therefore there is no basis for this claim that he would have been used to perform this work on the dates claimed.

Awards 6523 and 6562 cited by the organization during the discussion of this claim on the property are not controlling in the instant case, as neither of them contain facts in any way comparable to those present here.

In order to have this claim sustained, claimant must not only show an exclusive right to perform the work as against the employe who did perform it which the organization cannot do in this case, but also must show that the work complained of was necessary to be performed. Carrier has shown to the contrary that not only was the work not necessary, but arrangements made did not contemplate its being performed. The claim should therefore be denied in its entirety.

The Carrier affirmatively states all data contained herein has been presented to the employe's representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned Monday through Friday, 12:01 A. M. to 8:00 A. M., with Saturdays and Sundays as rest days. Among his regularly assigned clerical duties is the typing of "Freight on Hand" reports. Claimant contends that on Saturday, December 19, 1953, and Sunday, December 20, 1953, this work was performed by Checker P. Wnetkowski and General Foreman A. Soncha. There being no qualified furloughed or extra employe available, claimant contends that he should have been used on his rest days at the time and one-half rate as provided by Rule 19, current Agreement. The meaning of the rule does not appear to be in dispute. The question is largely one of fact and for that reason we shall attempt a proper resolution of the claim on that basis.

The dispute arose at Carrier's Jersey City Lighterage Office. It is predominantly a daytime operation with a large force of office employes, foremen and gangs working from 8:00 A. M. to 4:30 P. M., Monday through Friday. A lesser force works from 4:00 P. M. to 12:30 A. M. and a still more limited force works from 12:01 to 8:00 A. M. Claimant is assigned to perform clerical work on the third shift.

One of the primary duties of the claimant is to type the freight on hand reports which takes from 2½ to 4½ hours depending on the number of cars to be handled. The freight on hand report is a condensation of available information showing car initial and number, location, consignee, lading, destination, and the time and date ordered for delivery. When completed copies are distributed to the agent, the B&O Railroad Office in New York, the B&O local representative, the General Foreman and the Foreman on Docks 11, 13 and 14. The foremen are dependent upon this report to line up their work for assignment to gangs. When the work of handling each car is completed, it is noted on the report by the foremen showing the boat or lighter involved in the operation. Under normal operations the report com-

pleted by claimant by 8:00 A. M. on Friday is used during the entire day and, there being no regular day operation on Saturdays and Sundays, it is used as a performance record thereafter until the work shown thereon is completed.

On December 19 and 20, 1953, there was an unusual amount of work to be done which made it necessary to use dock force gangs on these two dates to complete the work shown on the Friday freight on hand report, plus a number of late arrivals (15 in number) which were shown at the end of the report in longhand. It is clear that the Carrier intended that the foreman directing the Saturday and Sunday work should use this same freight on hand report which was available for his use.

The foreman in charge of the work decided that a new report should be made up to facilitate the work, removing from the old report all cars listed on the old report which had been handled. The foreman directed Checker Wnetkowski to perform this work on the two days in question. Claimant insists that he should have been used to do this work on a rest day basis.

The Carrier's position is that the new freight on hand reports were not needed or authorized, and that the information in the original report prepared by the claimant on Friday was adequate. Even if this be a fact, we point out that the foreman was the supervisory employee in charge of the operation. He had authority, insofar as subordinate employees were concerned, to direct the method of operation. Employees under him are required to follow his directions and any violations of the agreement ordered by him are those of the Carrier. While the record shows that the foreman acted in good faith and had no intention of violating any agreement provisions, it seems to us that in using his judgment in expediting the work he directed Checker Wnetkowski to perform work that belonged to claimant. It seems clear to this Board that it was the duty of claimant to make new freight on hand reports each day of his regular assignment, Monday through Friday, and when Carrier's supervisory officer decided that new ones were required on Saturday and Sunday to expedite the work, it was the work of claimant and he should have been used. Even though higher supervisory officers may not be in accord with the foreman as to the necessity for the making of the new freight on hand reports, the Carrier is bound by the foreman's directions in this respect. It being the exclusive work of claimant during his Monday through Friday assignment, it was his work on his rest days in the absence of an available regular extra or furloughed employee as provided by Rule 19 (1). A sustaining award is required 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 28th day of November, 1955.