

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**

**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 current Clerk's Agreement in effect between the parties, and is continuing to violate same, when it failed and/or refused to call Clerk J. Savarese to perform necessary, unassigned clerical work on rest days, Saturday and Sunday, days which this Station is usually closed, and instead utilized an employe not covered by the Scope of the Clerical Agreement, one covered by the wage agreement of another craft, to perform the unassigned clerical work of rating, routing and billing the outbound carloads from the Flintkote Co. and this employe also checked the yard and performed other miscellaneous Clerical duties, and

(b) the Carrier shall now reimburse Clerk J. Savarese (and his successors if there be any) for eight (8) hours pay at rate of time and one half for September 13, 14, 20, 21, 27, 28, 1952 October 4, 5, 11, 12, 1952 and all subsequent Saturdays and Sundays this violation exists and continues.

EMPLOYEES' STATEMENT OF FACTS: On the main line of the New York, Susquehanna and Western Railroad, at Little Ferry N. J., the Carrier maintains a freight and passenger station employing two (2) regularly assigned Clerks working Monday through Friday, Saturday and Sunday being their assigned rest days, who are covered by the Brotherhood of Railway and Steamship Clerks' Agreement and one (1) Agent working Monday through Friday, Saturday and Sunday being assigned rest days, and covered by the Telegrapher's Agreement.

Clerk Van Winkle's assigned hours of duty are 8:00 A. M. EDST to 5:00 P. M. EDST, Clerk Savarese's assigned hours of duty are 6:45 A. M. EDST to 3:45 P. M. EDST and the Agent's hours are 8:00 A. M. EDST to 5:00 P. M. EDST. Clerk Van Winkle has worked in Little Ferry Station for over 13 years on his present position and during all that time has always performed the rating, routing, billing, Yard Check, demurrage, made up

the bills of lading, making out the waybills and performing the incidental work connected therewith.

For the past several years it has been the practice, with a few exceptions, to use an Agent-Operator who did not have forty hours of work for the week to cover such work at this station on Saturdays or Sundays, and on some occasions the regular Agent-Operator has been brought in to do such work.

On the dates for which this claim is made the work was performed by the regular Agent-Operator.

The work performed on the claim dates is work that is performed either by the regular Agent-Operator or by Clerk A. H. Van Winkle during their regularly assigned work week Monday through Friday, and is not part of the work performed by Clerk J. Savarese, the claimant, during his regularly assigned work week.

PROTEST: Since the contention and accompanying claim of the Employees in this dispute has for its purpose, and a sustaining award would result in, taking from an employee covered by agreement between this Carrier and the Order of Railroad Telegraphers unassigned clerical work on rest days, Saturdays or Sundays at Little Ferry station, work which has heretofore been performed by an Agent-Operator, the Carrier protests the rendering of a decision by the Board without notifying and calling the Order of Railroad Telegraphers to participate in this case as an interested party. The foregoing was upheld by this Board in Awards 5432, 5433, 5599, 5600 and 5627.

POSITION OF CARRIER: The Agent-Operator is in charge of this station and assigns to the clerks the work required from them. The necessity for clerical assistance depends on the volume of work to be handled.

The work performed on the claim dates, namely, taking yard check, receiving the bills of lading, making out the waybills and the drill slip, is work that is performed by either the Agent-Operator or Clerk A. H. Van Winkle during their regular work week and in line with the practice in connection with the Ebb and Flow of Work, the work on the rest days has been assigned to the Agent-Operator or an Agent-Operator who has not had forty hours of work that week. (See Awards of this Division 806, 1405, 1418, 2138, 2334, 3211, 3735, 3989 and 4559.)

The work performed on the claim dates is not the work performed by the claimant, Clerk J. Savarese, during his regularly assigned work week. This Board has held repeatedly that in order for the claimant to successfully contend that he was entitled to perform any work in question on his rest day he must show that the work in question was the **exclusive** property of the claimant during his regularly assigned work week. In this connection see Awards 5662 and 5663. Also in Award 6077 this Board denied a claim under the rule relative to work on days which are not a part of any assignment because claimant failed to show that the work in question (performed by another employee) "was work that the claimant had a preferential right to perform".

Under the facts and circumstances, and for the reasons set forth hereinbefore, the Carrier respectfully requests the Board not to assume jurisdiction in this dispute and to dismiss same. However, should the Board assume jurisdiction, it is the Carrier's position that claim is unjustified and not supported by the evidence, practice or meaning and intent of the Rules of the Clerks' Agreements and respectfully requests that the Board so find and deny the claim in its entirety.

(Exhibits not reproduced)

OPINION OF BOARD: Carrier maintains a freight and passenger station at Little Ferry, New Jersey. Three employees were assigned, one Agent-Operator and two Clerks, all working five-day positions. The Agent-Operator

is covered by the Telegraphers' Agreement. On September 13, 1952, and subsequent Saturdays, there was clerical work to be performed. Carrier used the Agent-Operator to perform this Saturday work. The Organization contends that this unassigned rest-day work belonged to the Clerks and made a claim for it.

The two clerks assigned were Van Winkle and Savarese. Van Winkle was assigned to perform the rating, routing, billing, yard checking, demurrage, making drill orders, answering telephone, and other miscellaneous clerical duties. Savarese handled ticket selling, interchange, freight, freight checking, company material, merchandise cars, met trains, and other incidental clerical duties. Prior to the 40-Hour Week Agreement Van Winkle, or Savarese were used to perform clerical work on their unassigned rest days. Subsequent to the 40-Hour Week Agreement the station was kept open seven days a week for a time, the Saturday and Sunday work being performed by a student having no agreement rights on the property. When the student could not work Savarese was used at the rest-day rate. The right of the student to work is not involved in this claim. His use is recited only to show the situation existing immediately before this dispute arose.

On August 8, 1952, Carrier was notified by the Flintkote Company that it would work on Saturday and have freight to be billed. Savarese was used on August 9, 16, 23, 30, and September 6, 1952, to handle the clerical work on these unassigned rest days. On September 13, 1952, and subsequent dates the Agent was used and the present claim resulted. The rest-day work was that performed by Van Winkle on Monday through Friday, although the Agent-Operator assisted on these days. There was no telegraphic work performed at the station at any time. The controlling rule is:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe." Rule 20½ (e).

The work in question arose on unassigned rest days. There was no extra or unassigned employes available. It was clerical work assigned to Van Winkle on Monday through Friday, but the latter has made no claim for it. Consequently, the regular employe must be treated as unavailable to perform it.

We point out that there was no qualified employe regularly assigned on Saturdays and Sundays who could perform the work in connection with his own. Operational needs required that the work be done. The work was assigned to a clerk during the work week. The regular clerk being unavailable, the work belonged to the clerks if one was available and qualified to perform it. Savarese was such a clerk and he should have been used. It seems clear to us that under the circumstances herein set forth that the extra or unassigned employe referred to in Rule 20½ (e) who would have been entitled to the work had one been available, means a clerical employe and not a telegrapher. This provision refers to an extra or unassigned employe in the craft that performs the work during the regular assigned work week. The general principle announced in Award 5623 appears applicable here. We there said:

"While it may be true as contended by Carrier that at other points on the system this type of work is performed by telegraphers as part of their regular assignments, the fact remains that at this location such work had increased to such an extent that it became necessary to assign a clerk. Under such circumstances when clerical work has been assigned exclusively to the clerical position during the week that same work may not be assigned to employes not under the Clerks' Agreement on the assigned off days of the clerical position. (See Awards 4477, 2052, 3425, 3825, 3858, 4832). The Forty-Hour Week Agreement did not change the application of that principle. It follows that the Carrier's action was violative of the Agreement and the claim must be sustained."

This was not a one-man station and awards dealing with the rights of telegraphers at such points have no application here. Nor do awards dealing with the right of a telegrapher to perform the rest-day work of clerks on a telegrapher's regularly-assigned day have application here. While we have no doubt that if the Agent-Operator had been regularly assigned to Saturday and Sunday work that he could properly have performed the work to avoid the necessity of assigning an employee to do it on overtime, as this Board has previously determined (Award 7133), the Agent-Operator cannot properly be used on an overtime basis to do the work to the exclusion of the clerks who regularly perform it during their assigned work week.

The Carrier contends that the Agent-Operator is the primary employee who may do any and all work at the station and, consequently, may properly be used to perform clerical work on clerks' rest days. This was correctly answered in Award 7100, a dispute on this same Carrier, wherein the Board said:

"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 20 1/2 (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."

We conclude that the regular employee in the present case was Van Winkle, a clerk. The work was therefore within the Clerks' Agreement. When Van Winkle was unavailable, the Carrier should have called a clerk to perform the rest-day work. Savarese, being such an available clerk, should have been used. A sustaining award is required.

The penalty rate for work lost being the pro rata rate, the claim will be sustained at that rate, except for holidays, if any, which shall be paid for 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.

AWARD

Claim (a) sustained.

Claim (b) sustained at pro rata rate, except holidays, if any, which are sustained at the time-and-one-half rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May, 1956.