

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney A. Wolff, Referee

PARTIES TO DISPUTE:

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

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Lorain, Ohio when on September 6, Labor Day; November 25, Thanksgiving Day; December 25, 1954 Christmas Day; and January 1, 1955, New Year's Day, Carrier failed and refused to call regular occupants of Car Checker positions for service on their regular positions on holidays, and

That Carrier shall now compensate Employee C. J. Murray for four (4) Hours at time and one-half rate for September 6, 1954, Labor Day; Employee Clifton Nail for four (4) hours at time and one-half rate for September 6, 1954, Labor Day, November 25, 1954, Thanksgiving Day, and January 1, 1955, New Year's Day; and Employee S. Donat for four (4) hours at time and one-half rate for November 25, 1954, Thanksgiving Day and December 25, 1954, Christmas Day. (Claim LT-29.)

EMPLOYEES' STATEMENT OF FACTS: The regularly-assigned duties of Employee C. J. Murray are as set forth on statement attached, Employees' Exhibit "A".

The regularly-assigned duties of Employee Clifton Nail are as set forth on statement attached, Employees' Exhibit "B".

The regularly-assigned duties of Employee Steve Donat are as set forth on statement attached, Employees' Exhibit "C".

On September 6, 1954, Labor Day, it was necessary that work on position occupied by C. J. Murray and Clifton Nail be performed. The Carrier, in lieu of calling the regularly-assigned employees to perform the work on their positions on the holiday, work that they would have performed had September 6, 1954 not been a holiday, called and used Robert Moran another regularly-assigned employee but who was regularly-assigned to another part of the Yard and who would not have performed this work if it had been one of his regularly-assigned work days. Employee Clifton Nail was not called for service on his regular position on November 25, 1954, Thanksgiving Day and January 1, 1955, New Year's Day, to perform work on those days that would have been performed by him had those days not been holidays. On November 25, 1954, Thanksgiving Day, the work was done by Employee J.

OPINION OF BOARD: When this dispute arose there were seven clerical positions on the first turn known as Yard Checkers at the Carrier's Yard at Lorain, Ohio. This job was described in the bulletin advertising the position: "The preponderant duties are: Checking Yard and preparing performance report."

The Yard Checkers all start and complete their tours at the general office. However, each one checks a distinct and separate part of the yard. They bid and are assigned on the basis of the portion checked each day.

Because of reduced operations on Labor Day, Thanksgiving, Christmas and New Years, the services of only one checker was needed. Six of the seven positions were then blanked and the senior qualified man was used to perform all of the yard checking required on these holidays.

The Claimants contend that the Carrier violated the Rules Agreement when it failed to call and assign them on the holidays to do the work (no matter how little) of their regular positions since these holidays are "unassigned days" (Rules 3-3 (f), 9 (b)).

There is no doubt that under the Rules Agreement the holidays stated are "unassigned days" and in the absence of available or extra unassigned employes who would otherwise not have 40 hours of work that holiday week, the Carrier must call in the regular employe to do the required work (Award 7134, Carter).

At the outset it is to be realized that the Carrier is not obligated to use an employe on a holiday even though the holiday falls within his assigned work week. Rule 11 (a) specifically so provides:

"Nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employes covered by this agreement below five (5) per week except that this number may be reduced in a week which holidays occur, by such holidays."

The question with which we really are presented is to determine who is "the regular employe" entitled to perform the required work within the meaning of Rule 3-3 (f).

Claimants assert that the regular employe under this Rule is the individual who would have performed every bit of work in question had the days involved been regular work days.

But this contention is erroneous since it presupposes (1) that the yard checking work performed by each Checker at the Lorain Yard on a regular work day is his exclusive work and (2) that the work involved cannot be concentrated in a single yard holiday assignment.

None of the checking work at this Yard can be considered to be the exclusive work of any one Checker. It is to be noted that each Yard Checker position is bulletined and filled without any particular yard area being specified. That the Carrier designates certain portions to be worked by each Checker after assignment to the Yard does not confer upon such Checker the exclusive right to do whatever work arises there.

It appears that the Carrier never assigned any particular Yard to any one individual. Originally the Yard Checkers divided up the yard checking amongst themselves and from time to time have traded yards or portions of yards. Unless the Agreement provides otherwise, it is within Management's prerogative to determine where these Yard Checkers are to render their services (Award 7786, Lynch, and Awards therein cited). The apparent divisibility in assigned duties is purely to avoid overlapping or duplication. This division of work made for the sake of convenience cannot be construed as conferring on the Claimants any right to exclusivity as argued by them.

Appropriate is our finding (Award 5912, Douglass):

"The claimant was employed as a report clerk. He held Position No. 36, with Saturday and Sunday as rest days. Report Clerk Job No. 43 worked Friday through Tuesday with Wednesday and Thursday rest days. Yard Clerk Job No. 37 worked Tuesday through Saturday and Yard Clerk Job No. 57 worked Monday through Friday.

"Report Clerk No. 36 had as one of his duties the checking of industries and tracks along what was known as Line A and making reports in regard thereto.

* * * * *

"The Organization maintains that the work of checking Line A on Sundays, * * *, was work of the claimant's position and work to which Report Clerk No. 43 was not entitled.

"We cannot agree with this contention. The fact that the claimant was assigned to perform this work during the week does not restrict it to the individual report clerk.

* * * * *

"The work here involved was general yard work and was not restricted to the claimant. It was work that consisted of making reports and inspection. It was not performed by a lower rated employe, but by one of equal rating. Neither was this an instance where the work was performed by one of another craft."

On this record in this case we do not find that these Claimants had the exclusive right to perform all the checking work in the area to which they usually are assigned.

The work involved is of a type reserved to the Yard Checkers as a class and not to any incumbent of a particular position. As a consequence where there are two or more employes in this class entitled to perform the work on an overtime basis, the senior employe in that class has priority (Award 5266, Robertson).

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1958.