Award No. 8377
Docket No. CL-8032

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)

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

(a) The Carrier violated the current Agreement commencing Saturday, March 22, 1952, and all subsequent Saturdays' account removing and assigning work from our agreement to employes not covered by said agreement.

(b) That the Carrier be required to pay Clerk Elmer Weir and/or his successors a day's pay at the rate of time and one-half until violation is corrected.

(c) The Carrier violated the rules of the Clerks' Agreement commencing Sunday, October 25, 1953, and all subsequent Sundays account removing and assigning work from our agreement to employes not covered by said agreement.

(d) That the Carrier be required to pay Clerk Elmer Weir and/or his successors a day's pay at the rate of time and one-half until violation is corrected.

EMPLOYES' STATEMENT OF FACTS: At Ensel Yard, Lansing, Michigan, the position of Yard Clerk is assigned from 7:30 A.M. to 12:00 Noon and from 1:00 P.M. to 4:30 P.M. The position prior to the 40-hour work week was a six day position, Monday through Saturday, with Sunday as a rest day. The assignment was 7:30 A.M. to 12:00 Noon in the yard office, and from 1:00 P.M. to 4:30 P.M. in the local office. On November 29, 1951, it was advertised in accordance with our bulletin rules as a 5 day position (Employes' Exhibit No. 1) Monday through Friday, with Saturday and Sunday as rest days. It was assigned to Mr. Elmer Weir (Employes' Exhibit No. 2). Commencing January 1952, Mr. Elmer Weir was assigned to work from 7:30 A.M. to 4:30 P.M., Monday through Friday devoting all of his time in the yard office.

4355, 4492, 5250 and 5387 cover cases wherein work in addition to the normal work week was given to clerks by way of assisting telegraphers with clerical work, and this additional work was later RETURNED to the telegraphers, such return forming the basis of claims which were consistently denied by your Board.

Carrier submits the instant claims here before your Board should similarly be denied.

All data submitted herewith has been placed before the representatives of the employes in handling this dispute on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: In Lansing, Michigan, an intermediate point between Carrier's route between Detroit and Grand Rapids, there is located a small yard consisting of seven live tracks known as Ensel. These tracks accommodate set offs and pick ups and there are also two short interchange tracks. There is a small yard office and the force for many years consisted of a Yard Master and three Operator-Clerks. The Operator-Clerks handled train orders and other communication work as well as handling switches to let trains in and out of the yard, list bills and forward them to the freight office which was located at another point. The operation was geared to handle the work for a switch engine that worked six or seven days on the first shift and five or six days on the second.

In 1946 a first shift Clerk was added, assigned to work Monday through Saturday for the purpose of assisting the Operator-Clerks who continued to perform their regular work with the added help. On September 1, 1949 the 40-hour week was placed in effect and the clerical position was assigned to five days work. Beginning October 12, 1949 the Clerk was assigned to the yard office in the mornings and in the freight office in the afternoons. The General Yard-Master's office was abolished on December 31, 1951 and the Agent took over his duties.

In December, 1951 a new Clerical position starting with December 8, 1951 was assigned to the Yard Office Monday through Friday. On each Saturday the Clerk was given a call until March 22, 1952. The Switch engine was discontinued on Saturdays as of February, 1952, and the clerical work was then dispensed with. On October 4, 1952, the second shift switch engine began working on Sundays, but not on Saturdays, and from October 5, 1952 until October 25, 1953, the Clerk was given a call on Sundays. In October, 1953 the calls for Sunday were discontinued although the switch engine continued in operation on Sundays until December 1, 1955, and then was idled on both Saturdays and Sundays.

The Carrier made a motion that the case is not properly before the Board because an Exhibit (Exhibit #3) of the Union had not been filed with the Board at the time of filing but had been placed in the file two months later. Carrier calls attention to Circular No. 1. The Petitioner's ex parte submission alleges the filing of Exhibit #3 but the Carrier asserts that said exhibit was not placed before it in handling the dispute on the property. Petitioner alleges that the failure to file the Exhibit was by "inadvertence."

Circular No. 1, (issued originally October 10, 1034) sets out the "Organization and Certain Rules of Procedure" under the caption "National

Railroad Adjustment Board." These rules were promulgated and released by the National Board for the guidance of the Divisional Boards for the purpose of complying with the duties imposed on the Board by the Railway Labor Act. To follow the rules expedited the handling of grievances and to follow the rules is a "must" as far as the Divisional Boards are concerned. The Form of the submission is outlined and defined. We find the following under the Caption "Position of Employes" —

> "Under this caption the employes must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence submitted in exhibit form, quoting the agreement or rules involved, if any; and all data submitted in support of employes' position must affirmatively show the same to have been presented to the carrier and made a part of the particular question in dispute."

This matter has been presented as an Ex Parte Submission and with regard gard to that Circular 1 says:

> "In event of an ex parte submission the same general form of submission is required. The petitioner will serve written notice upon the appropriate Division of the Adjustment Board of intention to file an ex parte submission on a certain date (thirty days hence), and at the same time provide the other party with copy of such notice." * * *

The Circular provides further

> "No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act approved June 21, 1934."

Petitioner's Exhibit #3 was not in the file at the time of Submission and the Carrier maintains that the exhibit was not presented when the claim was being handled on the property. This exhibit must be disregarded as not complying with the procedure outlined in Circular No. 1 (Awards 8068, 7916)

The Scope Rule which governs the instant situation reads:

"RULE 1

Scope

These rules shall govern the hours of service and working conditions of the following class of employes of The Chesapeake and Ohio Railway Company, Pere Marquette District:

Group 1—Clerks

(a) Clerical workers

(b) Machine operators, such as typewriters, adding and calculating machines, bookkeeping, accounting, timekeeping, key-punch, and statistical machines, dictaphones, teletypes, and all other similar equipment used in the performance of clerical work.

Group 2—Other office, station and store employes, such as office boys, messengers, train announcers, gatemen, baggage and parcel room employes, train and engine crew callers, telephone switchboard operators, elevator operators, office, station and warehouse watchmen, janitors and operators of trucks, tractors, cranes and other machinery in stores department.

Group 3—Laborers employed in and around stations, stores and warehouses.

Positions referred to in this agreement belong to the employes covered thereby, and no work shall be removed from this agreement except in the manner provided in Rules 19 (c) and 58."

Note that said rule reads in part

"Positions referred to in this agreement belong to the employes covered thereby, and no work shall be removed from this agreement except in the manner provided in Rules 19 (c) and 58." (Underscoring added)

Those two rules read:

"Rule 19

Transferring of Work and Positions"

"(c) Rank and file positions of work transferred to an office in which all positions are excepted will remain under all rules of this agreement, and no rank and file positions will be converted to excepted positions unless mutually agreed between the proper officer and the general chairman."

"Rule 58

Effective Date and Changes

This agreement shall be effective August 1, 1947, superseding all other rules, agreements and understandings, and shall continue in effect until changed in accordance with the provisions of the Railway Labor Act as amended."

There is no doubt that the Operator-Clerks continued to perform clerical work in connection to their other duties. The facts show that only the excess of their clerical work was performed by the Clerk. His regular week has five days and his work on Saturdays was on the basis of a "call" for which he was allowed the minimum Sunday call pay of five hours and twenty minutes at time and one-half.

The position of Clerk has not been abolished. The complaint here is that Saturday and Sunday work was removed. Employes Exhibit No. 5 sets out the work that the Clerk performed on Sundays as,

Check the yard, make switch lists for yard crews, pull the home route cars and waybills for cars ready to move.

This, apparently was the same work which the Clerk performed on those Sundays when he accepted a call at the minimum rate from October 5, 1952 until October 25, 1953. Work performed at that time was made necessary because of the scheduling of the switch engine on those days.

The work which was performed during the week he continued to do along with whatever clerical work the Operator-clerks performed. It was stated that his exclusive work over the weekends was held up until Monday when he reported for work and when he actually performed the work.

The Board is of the opinion his calls on Saturday and Sunday were extra and not his regularly assigned work, made necessary only because of the scheduling and work of the switch engine on those particular days and when the engine schedule was cancelled the work which he performed was in fact abolished.

The Switch engine was scheduled for a period of time after he was released from call and on those days undoubtedly work which he performed was necessary and must have been transferred to others and performed by others. That work, on those particular days could not have been abolished until the switch engine was cancelled. Certain "work" was taken from the Clerk on the Sundays that the switch engine was scheduled for operation.

The matter of notice to the Telegraphers was presented by the carrier. The Board is of the opinion that, this not being the abolishment of a job and the entire scheduling being now, unnecessary, the Telegraphers are not "involved" under the rule established by the Courts and no notice of them is required.

The carrier raises the objection that the claim cannot be sustained except as to the named claimant and not as to "and/or his successors". With this contention we cannot agree as the employes unnamed were the ones who held the clerk position and were easily ascertained. (Awards 4821, 5107 and others) In Award 5226, the Claim was only for one claimant and the Board therein held

> "The claim as made covers the period from July 27, 1947 to August 28, 1949. It is made on behalf of J. M. King as the incumbent of job 1576. The record shows that King held this position as Car Clerk from July 30, 1947 to December 5, 1948. It could have been made for whoever was incumbent of job 1576 but such is not the form of the claim made. * * *"

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 Employes involved in this dispute are respectively Carrier and Employes 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 we find the following:

Claim (a) The contract was not violated.

Claim (b) Claim disallowed.

Claim (c) The carrier violated the agreement each Sunday from October 25, 1953 until the switch engine was cancelled on Sunday, December 1, 1955.

Claim (d) Clerk Elmer Weir and/or his successor shall be paid for a minimum call on each Sunday within that period.

AWARD

That the carrier violated the agreement only in the case of Claim (c) and Claims (c) and (d) are sustained in accordance with this Opinion and Findings. As to Claims (a) and (b) the contract was not violated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1958.