

Award No. 9120
Docket No. CL-8212

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

With Referee Roscoe Hornbeck

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated the intent and purpose of the Clerks' Rules Agreement when on January 14, 1953 it unilaterally and arbitrarily rebulletined Crew Caller Position No. 427, assigned to Employee B. H. Diny, and rebulletined Relief Caller Position No. 14, assigned to Employee K. E. Horsley.

2. Carrier further violated the Agreement when on April 27, 1953 it unilaterally and arbitrarily rebulletined Crew Caller Position No. 553, assigned to Employee P. E. Norris, and again rebulletined Relief Caller Position No. 14.

3. Carrier shall now compensate Employees B. H. Diny and K. E. Horsley for all loss sustained as a result of the arbitrary rebulletining of their respective positions.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 14, 1953 Carrier had in effect three regular positions of Crew Callers and one Relief Caller position in the Crew Director's office at Galewood, Illinois. These employees were assigned to work around the clock calling switch and stock crews in the Chicago Terminals.

Employee H. L. Lawrence was assigned to Position No. 252, Crew Director, from 7:30 A. M. to 4:00 P. M. with rest days of Tuesday and Wednesday; rate of pay \$16.344 per day.

Employee P. E. Norris was assigned to Position No. 553, 2nd Trick Crew Caller, from 3:30 P. M. to 12:00 midnight with rest days of Thursday and Friday; rate of pay \$14.927 per day.

Employee B. H. Diny was assigned to Position No. 427, 3rd Trick Crew Caller, from 11:30 P. M. to 8:00 A. M. with rest days of Friday and Saturday; rate of pay \$14.927 per day.

Any loss of earnings which he may have had were the result of his actions and not that of the Carrier.

There are attached as Carrier's Exhibits "A", "B", "C" and "D" four letters which Mr. C. P. Downing, Assistant to Vice President, wrote Mr. H. V. Gilligan, General Chairman, on December 17, 1953, February 19, April 28 and September 13, 1954. This case, involving the changing of one or both rest days on a position, is only one of many of such instances which have occurred under the existing schedule rules and never has the Carrier's right, which is in no way abridged by contract, to change rest days, been challenged by the employees.

There was nothing arbitrary about the Carrier's action in this case. In the opinion of the Carrier there was reason for the change in rest days, but regardless of any difference of opinion in that regard, the rules do not support the claim and it should be denied in its entirety.

All data contained herein has been presented to the employees.

(Exhibits not reproduced).

OPINION OF BOARD: The motion of the Carrier to dismiss the claim for failure to file the ex parte submission within time, as required by Section 2, Article V, National Agreement, effective January 1, 1955, overruled. Awards 7850, 8669 and 8764.

The Carrier acted well within its managerial prerogative in rebulletining the positions upon which the claim is predicated. Award 7918.

If a valid reason for such action is required, it was stated in the letters of General Car Supervisor of the Carrier to the Division Chairman of the Organization, of date, March 19, 1953, and the Assistant to the Vice President of the Carrier to the General Chairman of the Organization, of date, February 19, 1954. Award 7376.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1959.