Award No. 9192
Docket No. CL-8753

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated and continues to violate the Agreement between the parties when:

1. On Saturday, November 27, 1954, and each subsequent Saturday, it required Mr. J. A. Patterson, incumbent of Yard Clerk Position No. 9, having a regular starting time at 3:30 P. M. to report for work at other than the regular 3:30 P. M. starting time of Position No. 9, and when:

2. On Saturday, November 27, 1954, and each subsequent Saturday, the Carrier permitted the Yardmaster to perform, during the Saturday hours immediately prior to the time Yard Clerk Patterson was called for duty, the clerical work normally performed by Position No. 9 Monday through Friday, and:

3. That the Carrier shall now be required in the absence of a regularly established relief position covering Saturday rest day work on Position No. 9 to assign such work to Mr. Patterson on basis of a minimum of eight hours at time and one half, and:

4. That Mr. Patterson shall be paid at punitive rate of Position No. 9 for the difference between a minimum of eight hours and the time actually worked on each Saturday since November 27, 1954.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, as representative of the class or craft of employes in which the claimant in this case holds a position hereafter referred to as the "Brotherhood", and the New York Central Railroad, hereafter referred to as the "Carrier."

OPINION OF BOARD: The instant controversy concerns the Carrier's recurrent use of Claimant for work on Saturdays, one of his rest days, on an overtime call rather than full sixth day basis.

It is Petitioner's contention that Claimant's position—that of second trick yard clerk at Minerva, Ohio, having a Monday to Friday work week, with Saturday and Sunday rest days—is a six day position and that Carrier is evading full payment for the sixth day by not hiring a relief employe but instead requiring Claimant to work regularly on that day, ordinarily for less than eight hours, with the remainder of Claimant's normal duties being performed on Saturdays by the Yardmaster, who is outside the scope of the controlling Agreement.

The Carrier counters with the argument that no provision of the Agreement restricts it from requiring Claimant to perform Saturday work on an overtime call basis. It admits that the Yardmaster makes a few entries in operational form but insists that these are incidental to his duties and that Claimant and the other Clerks enjoy no monopoly with respect to that work.

There is much that is logical and appealing in Claimant's argument. Claimant holds Position No. 9 and this was indisputably a six-day position both before and immediately after the advent of the Forty Hour Week. Thereafter, and for a very substantial period, Claimant has been required to work regularly on Saturdays and apparently was given blanket reporting instructions in that regard. Ordinarily, he has been called at 6:00 P. M. or thereafter on Saturdays, unlike Monday to Friday when his regular starting time is 3:30 P. M. The strong point in Claimant's favor is that although Position No. 9 does, by any version of the facts, call regularly for more than five days' work each week, no relief employe has been assigned to cover the Saturday work but Claimant is required to report as aforesaid.

The problem from Claimant's standpoint is that the rules of the applicable Agreement are not helpful to his case. There is no requirement, for example, as there is in some contracts, that a five day employe called on his rest day will receive a minimum of eight hours pay at the overtime rate. Rule 31 (a) covers the situation and while it provides for the eight hour minimum overtime payment for work performed by regularly assigned employes on their rest days, it specifically limits such pay to situations where that employe is "relieving an employe assigned to work on such day." Any doubt concerning the matter is affirmatively dispelled by Rule 31 (a) (2) which, together with Rule 32 (a), prescribes that when the regular employe called to work on his rest day is "not relieving an employe assigned to work on such day," he will be allowed "a minimum of 3 hours for 2 hours' work or less and if held on duty in excess of 2 hours, time and one-half will be allowed on the minute basis."

The applicability of Rule 31 (a) (2) is inescapable and its language is clear and unambiguous. The plain fact is that Claimant does not relieve an employe assigned to work Saturdays and it would be resorting to a fiction to rule that he does, or that Saturday work was part of his regular assignment and that he was entitled to work a full six days each week. Nor do we possess the power under Rule 35 (e) or any other applicable Agreement to hold that the Saturday work in question is or should be part of a relief position. It is not this Board's function to add or to subtract from the plain terms of an Agreement or to distort its language to reach a result that it may

consider equitable. In our view, Claimant received the compensation for his Saturday work that was authorized and directed by Rule 31 (a) (2). See Awards 8345, 6694, 6501, 2622 and 1178.

In line with the foregoing discussion, it is our opinion that Rules 26 (a) and 29 (a) do not apply and there was no obligation on Carrier's part to have the same starting time for Claimant's Saturday work as for his Monday to Friday work. Se Award 8345.

As to the Yardmaster, the evidence is not sufficient to support Claimant's charge. While there are general statements in the record that the former is engaging in a considerable amount of Claimant's work on Saturdays between 3:30 P. M. and 6:00 P. M., it does not appear that this work consists in more than making some entries on Forms T-27 (Report of Cars Switched) and T-184 (Conductor's Train List); in that connection, it is highly significant that in his letter of March 7, 1955, to the General Chairman, that is a part of the record in this case, Claimant himself indicates that the Yardmaster ordinarily makes like entries during Monday to Friday between 3:30 and 6:00 P. M. while Claimant is on duty. Under the circumstances, we can not hold that the small amount of notation work performed by the Yardmaster on Saturdays usurps Claimant's functions and amounts to a handling of clerical duties outside the scope of the Agreement. See Awards 1842 and 5112.

The claim accordingly will be denied.

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 the controlling Agreement has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.