

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 BELT RAILWAY COMPANY OF CHICAGO

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

(a) That Carrier violated rules of the Clerks' Agreement on Saturday, August 28, 1954 and subsequent Saturdays of each week when employe S. Wojcik, regular assignee to Position No. 276 at the Clearing Station (Chicago) of Carrier, was denied the right and opportunity to perform work normally and traditionally assigned to his position, i.e., processing bills of lading on inbound LCL freight received in trap cars at the Clearing LCL Station.

(b) That S. Wojcik, regular assignee to Position No. 276 as of date claim arose, and his successor(s), if there be any, be compensated for wage loss sustained on the basis of a call or two hours' pay at time and one-half for Saturday, August 28, 1954 and all subsequent Saturdays of each week until the rule violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The two positions directly involved in this dispute are Nos. 263 and 276. Both are designated by Carrier as five-day per week—Monday to Friday—positions under Rule 39½, Forty Hour Week Rules, of our Agreement.

Duties assigned to Job 263 are, generally speaking, those set forth in Bulletin No. 13 dated March 2, 1955, and are here quoted for ready reference:

"Issuing and handling LCL Bills of Lading, adding listing, recording and typing tonnage date and other information incident thereto, maintaining such records as are essential to the handling of LCL traffic, applying embargoes, contacting industries in connection with over, short and damaged freight and typing confirmations and such other notifications as may be necessary in the movement of

OPINION OF BOARD: This dispute concerns the Carrier's use of Clerk Filler rather than the Claimant to perform overtime work on Saturdays. Both employes are Class 1 clerks, who work in the same seniority district and office on Monday through Friday, Saturday and Sunday being rest days. In conjunction with other duties, each receives waybills, Claimant handling those on freight received in trap cars and Filler those received in trucks and trailers. On Saturdays there was a certain amount of clerical work available and Carrier called Filler, the senior employe, to perform it. On those days he handled, among other duties, the waybills on freight received not only in trucks and trailers, as he did during Monday through Friday, but also those on freight received in trap cars.

Rule 45 (f) deals specifically with work on unassigned days and reads as follows:

"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 forty (40) hours of work that week; in all other cases by the regular employe."

It is clear that each of the Saturdays in question was a day not part of any assignment. Since there were available no extra or unassigned employes with less than forty hours of work those weeks, "the regular employe" was entitled to the work.

Accordingly, the ultimate question is whether or not Claimant was "the regular employe" within the meaning of Rule 45 (f). The record shows that Filler handled mixed work on Saturdays, including work over which Claimant has and makes no claim. Just what part of his Saturday working time was devoted to the disputed duties does not appear. We are not satisfied that the record establishes that the work performed by Filler and Claimant is sufficiently different to vest the latter with exclusivity or preference in handling waybills on freight received in trap cars, when these duties are mixed with other waybill work customarily performed by Filler. We can not agree that Claimant is "the regular employe" under those circumstances. To rule otherwise would, in our opinion, produce a result that is artificial and unreasonable.

The work involved is of a type reserved to the clerks as a class. At least two employes—Claimant and Filler—were entitled to perform the mixed clerical duties on an overtime basis and the latter, as the senior employe, has priority and properly received the Saturday work in line with Rule 49 of the Agreement.

The claim will be denied. See Awards 8198, 7137, 6687 and 6523.

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 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 18th day of January, 1960.