

Award No. 9462

Docket No. CL-8365

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

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

a. The Carrier violated and continues to violate the terms of Clerks' Agreement and memoranda in connection therewith, when, beginning Saturday, September 3, 1949, and on subsequent Saturdays and/or Sundays, it has failed and refused to call Mr. W. M. Stewart, his substitutes or successors to perform extra time work of the class to which he is regularly assigned as Group 2 Messenger, position No. B-1 (14), and instead called and used Group 1 employe, John Dunnigan, and

b. Mr. W. M. Stewart, his substitute or successors be paid a minimum call for each Saturday and/or Sunday on which the Agreement has been violated as claimed. Claim to continue until all corrections have been made.

EMPLOYEES' STATEMENT OF FACTS: On the date claim arose Claimant Mr. W. M. Stewart, was regularly assigned to position B-1(14), Messenger-Mechanical Department Roster, Ashland, Kentucky. His seniority date as Messenger (Group 2) on that roster is as of February 26, 1946. Effective September 1, 1949, Claimant W. M. Stewart was assigned rest days of Saturday and Sunday, those days not being assigned in a regular relief assignment.

Effective September 3, 1949 the Carrier began to require Steno-Clerk, Mr. John Dunnigan to perform, on Saturdays and Sundays, the work of sorting, distribution and collection of time cards regularly performed Mondays through Fridays, by Claimant Stewart. Clerk Dunnigan was regularly assigned to position of Steno-Clerk No. A-4(4) (Group 1). Mr. Dunnigan has Group 1 seniority on the Ashland Mechanical Department Seniority Roster as of March 6, 1946. Saturdays and Sundays were also the assigned rest days of Mr. Dunnigan, and on those days, in addition to work regularly

higher rate is paid for all of the work which has to be performed, so that 5 hours 20 minutes at the Stenographer-Clerk time and one-half rate is paid.

The Employees in other instances have argued that Rule 35 (b) is properly a part of the allocation of overtime rule, being intended to provide that when cut-off (furloughed) employees are available to work at straight time on the unassigned day, they may be used in lieu of the regular employee who has already worked his five work days in that work week and who would have to be paid overtime.

Stated in other language, if there is a cut-off employee who has worked only three days (to illustrate) when the Saturday or Sunday comes on which the work necessary, the Carrier may use that employee at straight time, instead of using the regular employee at time and one-half.

However, that phase of the situation is not involved in the instant case, because there was no cut-off employee available to work at straight time, and the work had to be performed by a regular employee, so that question can only relate to **what regular employee will be used**. As the Carrier has already stated, the answer is not hidden or in any manner cloudy as to intention of the parties, because the last sentence of the rule stands forth to say plainly:

“ . . . In working regular employees hereunder, it is understood that where a small amount of work is required on each of two or more positions and only one employee is required, the employee regularly assigned to the majority of the work to be performed will be used.”

The Employees in their handling on the property have not contended that the work to be performed on such unassigned days does not fit the “small amount of work” feature of the rule. Therefore, as already shown, there can be no question about which work is in the majority, and the Carrier is not clear as to on what basis the Employees contend the rule has not been met, because in none of their correspondence on the case have such particulars been set forth as to where they derive the separate group theory. The Employees will undoubtedly state their basis of claim in this respect in their ex parte submission, and the Carrier can then make appropriate answer in connection therewith in its rebuttal brief.

As repeatedly shown, however, the handling fully meets all of the provisions of the rules applicable, and the claim should be denied in its entirety.

All data contained in this submission have been discussed in conference of by correspondence with the Employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier has required Steno-Clerk Dunnigan to perform on Saturday and Sunday, some of the messenger and related work which Claimant Stewart performed on his regular work days, Monday through Friday, which is Group 2, unassigned work, of Stewart's position B-1 (14). On the two unassigned days Saturday and Sunday, Dunnigan is also required to perform some of the work of his Group 1 position. Dunnigan consumes about 31% of his time on Saturday and Sunday performing Claim-

ant's work. Claimant does not hold Group 1 seniority nor does Dunnigan hold Group 2 seniority.

The Carrier relies on Rule 35 (a) and (b) which reads as follows:

"(a) Except where it is otherwise agreed between the proper officer and Division Chairman or Local Chairman authorized to act in his stead, in working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on holidays; the same principle shall also apply in working extra time on unassigned days except as provided in Section (b) of this rule.

"(b) Work on Unassigned Days. 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 'cut off' (furloughed) employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee. In working regular employees hereunder; it is understood that where a small amount of work is required on each of two or more positions and only one employee is required, the employee regularly assigned to the majority of the work to be performed will be used."

Rule 35 (a) states ". . . employees regularly assigned to class of work for which overtime is necessary shall be given preference . . .". The claimant is the regularly assigned employee to the class of work outlined in this claim.

Rule 35 (b) states that when "work is . . . to be performed on a day which is not a part of any assignment, it may be performed by an available 'cut-off' (furloughed) employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee". Dunnigan was not a cut-off (furloughed) employee but was an assigned Group 1 employee. The last sentence of 35 (b) relates to employees in the same class due to the fact that 35 (a) refers to employees in a class.

The Carrier violated the Seniority rights of this Claimant when it assigned a regular Group 1 employee to perform claimant's Group 2 work on unassigned days. This claim was filed on June 24, 1952 and will be sustained, for a minimum call, from that date on for each Saturday and Sunday that a Group 1 employee performs Group 2 work.

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 violated the Agreement.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 23rd day of June, 1960.