

Award No. 9490

Docket No. CL-8865

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

a. The Carrier violated the Rules of the Clerks' Agreement at Endion Freight Station, Duluth, Minnesota, when on the following Sundays and/or holidays, October 9, 16, 23, 30, November 6, 13, 20, 24, 27, December 4, 11, 18 and 26, 1955, and January 8 and 15, 1956, it failed and refused to call for overtime work Messrs. Joseph Flatley, Freight Checker, Frank McIlroy, Trucker and Andrew Kangas, Jr., Bill Clerk, who were all regularly assigned to five day per week positions at Endion, Monday through Friday.

b. Carrier shall now pay to named claimants one day's pay at the rate of time and one-half for each and every Sunday and/or holiday listed herein on account carrier's violation of Agreement.

EMPLOYEES' STATEMENT OF FACTS: Endion Depot is operated seven days per week. At this point there is passenger service, freight service and a switching yard. Passenger tickets are sold seven days per week. Cars are switched and moved in and out of the yard seven days per week. The loading and unloading of LCL freight is performed five days per week, Monday to Friday, inclusive, with the following exception.

On Sundays and holidays, when none of the regular freight station forces are on duty, the Zinsmaster Bread Company delivered a large quantity of bread and miscellaneous bakery goods to the D. M. & I. R. Ry. at its Endion Freight Depot. This goods was delivered at or about five P. M. and was billed, checked and trucked by the Car Clerk on duty, consuming somewhere between two and three hours of his time on each Sunday and holiday listed in our claim. With this single exception Car Clerks performed no freight handling and their duties are as listed on bulletin dated December 7, 1955:

"1 — Asst. Car Clerk 3 P. M. to 11 P. M. Tues. and Wed. Off.

classifications of employes may be made on trifling differences for many different reasons. The classifications which are of interest here are those which have some relation to the issue before us. A classification for pay purposes or the exercise of orderly displacements is not such. It is classifications for purposes of seniority only that have application here. It appears from Award 6688 that the employes involved were of the same craft, in the same seniority district, carried on the same seniority roster, were in classes having common seniority, and were qualified to perform the work involved. Under such circumstances, we cannot agree with the result reached. We think the right to stagger work weeks in accordance with carriers' operational requirements contemplates that such positions may be staggered for the very purpose of avoiding the assignment of rest day work which is not necessary to the economic and efficient operation of the railroad. We cannot agree with the holdings of Award 6688 with reference to carriers' right to stagger work weeks or with the interpretation placed upon classes or classifications of work. Award 6690 appears to have adopted the same erroneous conclusions. We think the foregoing awards fail to consider the overall purpose of the 40 Hour Week Agreement. They fail to consider all of the provisions of that Agreement and give stress to particular provisions which create an illusory result. A part of the bargain for a five day week at the then existing pay for six days' work, was the right of the Carrier to eliminate the necessary rest day work to the extent that it could by the expedient of staggering work weeks.

We hold that Carrier assigned the Agent-Telegrapher and the Telegrapher-Ticket Clerk at Stillwater in accordance with Agreement provisions. No basis for an affirmative award exists."

IV. Conclusion.

In summary the Carrier submits that it has conclusively proved that the claim of the Employes in this case is without merit for the reason (1) it is contrary to a past practice of 25 years standing known to and acquiesced in by the Employes, (2) the claim is based on a misconstruction of agreement rules, particularly the provisions thereof involving the 40 hour work week, and is without merit under the agreement rules, and (3) prior awards of the Third Division do not support the claim.

The Carrier respectfully requests therefore that the Board sustain the position of the Carrier and deny the claim of the Employes in its entirety.

All that is contained herein is known or available to the employes or their representatives.

(Exhibits not reproduced)

OPINION OF BOARD: Upon careful consideration of the record, we find that the claim is without merit and should 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 Employee involved in this dispute are respectively Carrier and Employee 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 30th day of June, 1960.