

Award No. 9537

Docket No. CL-8361

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated the Clerks' current Agreement on certain Sundays and/or holidays beginning Sunday, April 22, 1953, and continuing to about June 10, 1954, when it called junior Car Clerk, L. L. Ford, to perform work on Sundays or holidays instead of senior Car Clerk, W. D. Alderson, Memphis, Tennessee, Local Freight Office. Claim also covers dates subsequent to June 10, 1954, until the violation is corrected.

(2) That W. D. Alderson be compensated for eight (8) hours at one and one-half times his regular Car Clerk rate of pay for each and every Sunday and/or holidays that L. L. Ford was called for Car Clerk work instead of W. D. Alderson.

EMPLOYEES' STATEMENT OF FACTS: W. D. Alderson and L. L. Ford are both regularly assigned to Car Clerk positions, Memphis, Tennessee, with rates of pay the same. Alderson is assigned Monday through Friday, Saturday and Sunday off days. Ford is assigned Tuesday through Saturday, Sunday and Monday off days. Alderson is senior in service to Ford, since he holds a Group 1 seniority date of February 17, 1936, while Ford holds a Group 1 seniority date of November 18, 1942.

Alderson's assigned duties briefly consist of: Checking interchange reports to and from connecting lines and making corrections, records of arrival of city loads and making supplemental interchange reports.

Ford's assigned duties briefly consist of: handling open car records and tracing delayed cars.

The work for which Ford was called for and performed on certain Sundays and holidays was not definitely assigned to either of the positions, but was work which either one or both performed during their regular weekly assignments and which was sometimes required to be performed on Sundays

their present jobs. Alderson was senior to Ford and had the opportunity to bid in the job at the same time Ford was assigned if he wanted the work attached to that position. But he did not file bid. He waited until Ford vacated the 8:00 A. M. job and filed bid for that. He was assigned in September, 1952, but made no claim until April, 1954, at which time he claimed the Sunday work back to April, 1953.

It is the Carrier's position that the information obtained by Car Clerk L. L. Ford from the Johnston Yards was information necessary to the continuance of his records, enabling him to close out "short" records and keep same on a current basis; that the majority of his duties were keeping these "short" or open car records and tracing delayed cars; that Ford would have been used during his regularly assigned week day hours to go to Johnston Yards and obtain information on short cars and close out "short" records accordingly had the records at Johnston Yards been readily available at that time. Thus, Carrier contends that the work performed on the "unassigned" Sundays was work that belonged to Car Clerk Ford's position, and that insofar as this work was concerned Ford was the regular employe, and was properly used under the provisions of the above-quoted Rule 32-8.

Carrier submits that its position is upheld by awards of the Board. Please note Opinion in **Award 6258** (Referee Elkouri) reading in part:

"Were the conclusion here that both Mr. Connally and Mr. Kennedy performed the 'class of work' herein involved, it would be necessary to further conclude that Mr. Connally, as the senior employe, was entitled to the work. Since, however, Mr. Connally was not regularly assigned to the class of work — the duties — involved, such conclusion is not required."

Without prejudice to its position that the claim is entirely without merit in any respect, the Carrier respectfully submits that in no event could the retroactive claim be valid. Attention is directed to **Award 6594** (Referee Rader) in which a retroactive claim was denied with the following Opinion:

"We view the date of filing claim, June 23, 1951, as the controlling date on payments for the violation. To sustain the prior date, April 17, 1950, as requested in (2) of the claim would be to set up a precedent which might permit serious abuses in the payment of like claims to any date retroactively going back to the alleged inception of the violation. The parties are familiar with the procedure as provided in the Railway Labor Act for the filing of claims. Failure to follow the procedure in the filing must defeat the request for payment back to April 17, 1950. See Awards 2852, 4281, 4282, 4428, 4437, 4964, 4966 and 5098."

The Carrier respectfully submits that the facts in evidence show that the claim is not supported by the rules, and should be denied.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier has two Car Clerks at its Local Freight Office at Memphis. Both have work weeks of Monday through Friday. The more senior Clerk (Alderson) claims that he was entitled to Sunday and holi-

day work which the junior Clerk (Ford) was called to perform on Sundays and holidays at the Illinois Central's Johnston Yard.

This work is accessible to Carrier's employees only on Sundays and holidays and relates to the work of its Memphis Office. It consists of checking short (incomplete) records of freight cars at the IC office. Such checks are made by Ford on Sundays and holidays if a search of the car records at the IC office adjacent to his work space in Memphis does not yield the information.

Ford does the short record checks at Alderson's requests and passes back the completed records to him. Alderson maintains car records and makes interchange reports.

Claimant asserts that the Sunday and holiday work was of the kind done by "either or both of them" (Alderson and Ford) and hence belonged to the senior employee under a combination of Rule 6-1:

"Seniority rights of employees to vacancies or new positions will be governed by these rules."

and Rule 32-8:

"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 extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The Carrier contends that Rule 32-8 was applicable, that Ford was "the regular employee" who was properly assigned in the absence of an "available or extra unassigned employee."

In support of its position Claimant contends that before he became the senior Clerk and while Ford was a Car Clerk the senior Clerk performed the Sunday and holiday work. Carrier responds that this was so because Ford occupied the position now held by Alderson and the former senior Car Clerk held the position now held by Ford. Viewed in the light most favorable to the Claimant this evidence constitutes a stand-off; it does seem a reasonable and rational explanation for assignment of Ford. This is all the more so because the Sunday and holiday work is so closely related to that performed by Ford during the work week.

The Claim fails for want of sufficient proof.

Employees submitted Exhibits F, G-1 and G-2 bearing dates **after** the filing of notice of intention to submit the case to the Board. They obviously are untimely and inadmissible.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August, 1960.