

Award No. 9681

Docket No. CL-9243

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

1. Carrier violated the rules of the Schedule for Clerks, effective May 1, 1953, when the Agent at Logansport, Indiana, was permitted to perform the duties of a clerical assignment on Sunday, October 30, 1955, each Sunday during the month of November, 1955, Sunday, December 25, 1955 and Sundays, January 1, 8, 15 and 22, 1956.

2. Clerk M. R. O'Brian, regularly assigned to position of Cashier in the office of the Agent at Logansport, Indiana, shall be compensated for eight (8) hours at overtime rate of his assignment on Sunday, October 30, 1955, each Sunday of November, 1955, Sunday, December 25, 1955, and four Sundays, January 1, 8, 15 and 22, 1956.

EMPLOYEES' STATEMENT OF FACTS: The clerical force at Logansport, Indiana, as of the issuance of the January 1956 clerical roster for the Montpelier Division, constituted five positions as follows:

Bill Clerk

Cashier

Yard Clerks (2)

Relief Clerk (1)

Clerk M. R. O'Brian, assigned to position of Cashier, has a clerical service date of May 10, 1946, and is junior in service to the Bill Clerk and one Yard Clerk.

The position of Cashier is a five (5) day position, Monday through Friday, daily hours of assignment 8:00 A. M. to 5:00 P. M. The Bill Clerk position is a seven (7) day assignment with relief Clerk assigned on Sundays and Mondays, daily hours of assignment 5:00 P. M. to 2:00 A. M. One Yard Clerk assignment is a seven (7) day position, daily hours of assignment 11:15 P. M. to 8:15 A. M., with a relief clerk assigned on Tuesday and Wednesday. One Yard Clerk assignment is a five day position, Monday through Friday, hours

"It is further my understanding and I believe cannot be disputed by any one, that the yard clerks made it a practice to not be able to be located by agent Bakle when there was work for them on Sunday. also the Cashier would not be at home or would not answer his telephone. (Emphasis ours)

CONCLUSION

The petitioner is attempting through the medium of an award by this Division to obtain a rule which would prohibit the Agent at Logansport, whose working conditions are governed by the Order of Railroad Telegraphers, from performing clerical work on Sundays. In view of the fact that:

1. Agents and Telegraphers covered by the Telegraphers' Agreement have always performed clerical work incidental to their positions.
2. The right of the Carrier to require the performance of clerical work by Agents and Telegraphers has never been surrendered by agreement, or
3. The Schedule for Clerks commencing with that which became effective with the Carrier as of January 1, 1920, as a result of the agreement between the Director General of Railroads in Federal Operation, and all schedules subsequent thereto, did not limit the Carrier's right to have Agents and Telegraphers perform clerical work.
4. The Agent at Logansport has performed the clerical work in question at Logansport on Sundays for many years.
5. Clerks have not performed the clerical work in question at Logansport during the day shift on Sundays for many years.
6. The Schedules for Clerks, effective November 1, 1948 and May 1, 1953, did not change or abrogate the practice of the carrier in using the Agent and Telegraphers to perform the clerical work at Logansport on Sundays, a practice of many years standing.

the claim as set up in the Employees' ex parte Statement of Claim is without merit.

The Carrier affirmatively states that the substance of all matters referred to herein has been made the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

Exhibits not reproduced.)

OPINON OF BOARD: The Record herein establishes that the clerical work in dispute was regularly assigned to Yard Clerk Job 13, six days per week, hours 7:30 A. M. to 4:30 P. M., and that the Agent performed such work on his assigned rest day, Sunday, at the punitive rate of pay in preference to calling "the regular employe" as provided in Rule 12, Section 2 (g); thus, the Agreement was violated. The Award in this case of necessity can only apply to the particular circumstances involved in the case.

The claim should be sustained at the pro rata rate. As to allowing the pro rata rather than overtime rate see Award 8041 in which the present Referee also participated.

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 Carrier violated the Agreement.

AWARD

Claim sustained at the pro rata rate.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois this 7th day of December, 1960.