

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 BOSTON TERMINAL CORPORATION

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

(1) The Carrier violated the rules of the Clerks' Agreement when they failed to call Mrs. Margaret Stuart to perform the necessary work on her position of Reservation Clerk on February 22, 1956, and

(2) The Carrier shall now additionally compensate Mrs. Stuart for eight hours at the rate of time and one-half on the above referred to date.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Margaret Stuart, at the time, was regularly assigned to position No. 22, Reservation Clerk, a 7-day position, rate of pay of \$14.632 per day, rest days Saturday and Sunday, and the Reservation Bureau is located on the second floor, South Station, Boston, Mass. The primary duties of Mrs. Stuart's position were messenger duties which were exclusively performed by Mrs. Stuart, together with additional clerical duties, as follows:

1. Make up space report of space not sold for all trains.
2. Make up duplicate diagrams for all B & A trains.
3. At 8:30 A. M., 11:00 A. M. and 1:00 P. M., each day, go from the 2nd floor to the 3rd and 4th floors and pick up the B & A and New Haven wires from the B & A and New Haven Telegraph Offices, and give to Clerks to sort and handle.
4. Deliver all B & A diagrams to the B & A Conductors at the trains at 10:30 A. M. and 2:30 P. M., this requiring her to go on foot from the second floor of the Station down to the concourse, a distance of approximately 1 city block.

POSITION OF CARRIER: The Organization in this claim is seeking not an application of schedule rules, but rather a change in existing holiday rules and practices. This may not be properly done by means of a time claim. If a change in rules or a new rule is desired the Railway Labor Act, in Section 6, provides the proper procedure. The Board, we submit, should deny the claim as not properly presented.

Section 5 of Article II of the August 21, 1954 National Agreement specifically states:

"Nothing in this rule shall be construed to change existing rules and practices thereunder governing the payment for work performed by an employe on a holiday."

If payment for work performed was not affected then absent specification in such Article II there was no change and no restriction on the assignment of holiday work.

The rules of the schedule on file with the Board do not make provision for the distribution of work on holidays. Provision for such distribution in the Reservation Bureau was had by understanding long in effect which is detailed in the Statement of Facts. The method used is not peculiar to this particular facility, but rather is a common one at points and in Bureaus where a substantial number of employes are engaged in the same or similar work. For example, the calling of employes engaged in the handling of baggage and mail is quite generally governed by similar arrangement at numerous stations on the properties of the proprietary companies. It is an eminently fair and reasonable method of distributing work for which premium pay is allowed in instances where similar duties and the same rate of pay permits. It eliminates favoritism and claims of favoritism as well as permitting senior employes to enjoy the day off if they so desire.

No reason has been advanced that suggests the desirability of any change in the particular bureau here involved. No rule has been cited which requires an alteration in present practice. Its only result would be to require the working of unnecessary positions on holidays.

It is therefore the position of the Company that the claim should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends that Claimant, a Reservation Clerk at Boston's South Station, should have been called in preference to two other employes for work on February 22, 1956, one of the holidays recognized by the applicable Agreement.

It is undisputed that the day in question was an unassigned day for the employes concerned. Rule 44 (f) applies specifically to work on unassigned days and provides 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 40 hours of work that week; in all other cases by the regular employe."

It is clear, from an examination of the record, that Petitioner has failed to establish that Claimant is "the regular employe" and had an exclusive right to perform the disputed work. The two employes used to perform the duties in question were also Reservation Clerks and were senior to Claimant. All three employes are paid the same rate and their positions are bulletined without specification of duties. Under the circumstances, Carrier's use of the senior Reservation Clerks rather than Claimant seems reasonable and proper. The claim will be denied. See Award 8198.

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 Employe involved in this dispute are respectively Carrier and Employe 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 14th day of July, 1961.