

Award No. 10499

Docket No. CL-10514

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when at Rome, Georgia, on April 26, 1957, a recognized holiday, it required the performance of approximately four hours of work assigned to and normally performed by Claimant Paul T. Dougherty, Utility Clerk, failing to offer Claimant Dougherty preference to perform such work, and

(b) Claimant Paul T. Dougherty shall now be compensated four hours and forty-five minutes at time and one-half the rate of his position, in addition to all other earnings.

EMPLOYEES' STATEMENT OF FACTS:

1. Claimant Paul T. Dougherty was, on the date claim arose, regularly assigned to the position of "Utility Clerk", Rome, Georgia. A copy of Vacancy Bulletin last advertising Claimant Dougherty's position for bids is attached hereto and identified as Employees' Exhibit "A". (Note: The title of "Utility Clerk" is not a proper title. That, however, is not here in issue).

Mr. M. M. Bennett, Jr., was, on the date claim arose, regularly assigned to the position of Bill Clerk. A copy of the last bulletin advertising Clerk Bennett's position is attached hereto and identified as Employees' Exhibit "B".

2. Under date of May 9, 1957, Claimant Dougherty wrote Local and Division Chairman, Mr. D. S. Lemons, setting forth that he had been denied preference to perform the work required on his position on April 26, 1957, and detailing the work attached to his position which the Carrier had required Clerk Bennett to perform on that holiday (Employees' Exhibit "C").

3. Division Chairman Lemons filed claim under date of June 22, 1957. The claim, being declined, was appealed up to Carrier's highest officer designated to receive and pass upon such appeals. Conference was held on Jan-

As to the third and fourth items (thirty minutes checking city yard, and fifteen minutes inspecting a car of damaged freight) carrier emphatically denies that such work has ever been assigned exclusively to or performed solely by claimant. This is also the case with respect to item five, "working up the mail" which actually consumed about fifteen minutes on this holiday, not thirty minutes as alleged by the employees.

Even using the employees' own time estimates, the total time consumed by Mr. Bennett in performance of items three, four and five is only one hour and fifteen minutes.

Of the five items listed by the employees, checking the city yard is the only duty that could possibly be said to be assigned by bulletin to claimant. Rule 28 (a) of the effective agreement provides that it is not necessary to call employees on rest days or holidays to perform less than one hour and thirty minutes' work when there are other employees on duty in the department who can perform the service. Therefore, there was no necessity whatever for calling claimant on the holiday, as his services were not needed or required; and his position was blanked in accordance with Rule 46 (f) (1) of the effective agreement.

For the reasons stated herein, the claim is clearly not supported by any rule or provision of the Clerks' Agreement and should be denied in its entirety. Carrier respectfully requests that the Board so decide.

All evidence submitted in support of carrier's position is known to employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Paul T. Dougherty, occupant of the position of utility clerk, alleges that at Rome, Georgia, on April 26, 1957 (Decoration Day), a recognized holiday, the Carrier required the performance of approximately four hours of work normally performed by Claimant Dougherty, utility clerk, but failed to give the preference to perform such work to Claimant but instead assigned the work to M. M. Bennett, Jr., a billing clerk; because the Carrier failed to do so, Claimant asks this Board to hold that there was a violation of the Agreement, relying principally upon Rules 28, 32 to 33 (c).

Carrier shows that in April, 1957, the regularly assigned group of clerical employees at the Rome, Georgia, freight agency is as follows: Chief Clerk-Cashier, Rate Clerk, Bill Clerks—2, Expense Clerk, Claim and Demurrage Clerk and Utility Clerk.

The preponderating duties of the position of utility clerk are, as follows: "Checking yards, receiving and delivering freight, inspect damaged freight, assist in billing freight and expensing waybills. Applicant must be familiar with rates enough to prepare Forms 2491 and 2492, and handle over short and damaged freight. Position is bonded."

M. M. Bennett, Jr. occupied one of the two bill clerk positions. His preponderating duties are, as follows: "Expense inbound and bill outbound freight. Issue bills of lading. File shipping orders and waybills. Pouch waybills. Make reports -2280-A and 122-MAB- make switch lists. Must be rapid typist. Bond is required."

The Claimant received pay for the holiday in question as provided in Section 1 under Article 2 of the August 21, 1954, Agreement but alleges that the violation of Agreement was caused when the Carrier neglected to call him, as he should have been given preference to work his position on the holiday and that Billing Clerk Bennett performed 4 hours and 45 minutes of work regularly assigned to the Claimant, as quoted in letter of May 9, 1957 signed by Claimant.

"Pulled waybills and run extensions on same * * * 3 hours devoted to this operation.

"Rated the pulpwood bills that came in that day. Approximately 30 minutes devoted to this operation.

"Checked the City Yard that P. M. Approximately 30 minutes devoted to this operation.

"Made inspection on damaged car consigned to Bagby Transfer Co. Car CGA 7016. Approximately 15 minutes devoted to this operation.

"Worked up the mail. Approximately 30 minutes devoted to this operation."

We agree with Claimant when he recites Rule 28 "(1) that in case of overtime work before and after assignment hours, the occupant of the position will be given preference, and (2) that in case overtime on rest days and holidays, this same principle will apply"; however, we must also agree and admit that the Carrier has the right under Rule 46 (f) (1) to dispense with employee services on a holiday.

Evidence here discloses that the Carrier blanked Claimants position as it had a right to do on April 26, 1957. It appears that only one of the two bill clerks was needed on the holiday and Bennett, the senior clerk was given the preference. It will be noted that both the Claimant and Clerk Bennett had similar duties in connection with rating pulpwood, working waybills, report work, billing and expensing freight. Not one of these items is assigned solely to Claimant or regularly performed by him, as utility clerk, to the exclusion of other clerks. It is work in the course of his normal duties Clerk Bennett regularly does. Assuming that the third, fourth and fifth items set forth by Claimant were regularly assigned exclusively to Claimant, the time required in their performance was well within the one hour and thirty minute provision contained in third paragraph of Rule 28 (a).

Award 8872 (Murphy) involved a dispute identical in principle between these same parties where the claim was 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

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1962.