

Award No. 10591
Docket No. CL-10099

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**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

- (1) That Carrier violated the Clerks' current working Agreement at Pine Bluff, Arkansas, when it required B. M. Johnson to suspend work on his regular position of Rate Clerk and assume the duties of the Chief Clerk's position on each Saturday, effective September 1, 1949.
- (2) That B. M. Johnson be allowed the difference between Rate Clerk's rate of pay as paid and the Chief Clerk's rate of pay for each Saturday he performed the duties of Chief Clerk subsequent to September 1, 1949, until such violation is corrected.
- (3) That B. M. Johnson be compensated for an additional day's pay for each and every Saturday of each week commencing September 1, 1949, that he was required to suspend work on his regular assignment until such violation is corrected.
- (4) That R. Z. Hillis, Chief Clerk, be compensated for an additional day's pay for each and every Saturday of each week commencing September 1, 1949, that B. M. Johnson performed his assigned duties as Chief Clerk.

EMPLOYEES' STATEMENT OF FACTS: Effective September 1, 1949, when the shorter work week was put into effect, the Rate Clerk position to which B. M. Johnson is assigned was considered a six-day position. Such is evidenced by the fact that his rest days were designated as Sunday and Monday; also the position of Assistant Chief Clerk, which carries the same rate of pay and duties as that of Rate Clerk was given rest days of Saturday and Sunday, permitting six-day operation, Monday through Saturday of each week.

The Chief Clerk's position to which Mr. R. Z. Hillis is assigned was assigned Saturday and Sunday as rest days.

Effective September 1, 1949, and subsequent thereto B. M. Johnson performed his regularly assigned duties of Rate Clerk Tuesday through Friday of

that Awards 5736 and 6184 are not in harmony. Economy in operating a railroad should be an important item when it does not violate the Agreement. In our opinion, the Carrier was within its rights in handling the work at Porter, Indiana."

Award 6946 (Referee Carter) denied telegraphers claim account staggering assignments of Agent and Telegrapher-Ticket Clerk:

"Where work remains to be performed on unassigned days remaining after all regular relief assignments have been made which are possible to be made, Section 14 provides that it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week and, in all other cases, by the regular employe. This rule means just what it says, as we have consistently held, and when the work involved falls within its terms, the Carrier has no alternative method of getting the work done. But in the case before us, the Carrier procured the performance of all necessary work on the days involved by the expedient of staggering the work weeks of the Agent-Telegrapher and the Telegrapher-Ticket Clerk. Under such circumstances the rules governing regular relief assignments and work on unassigned days have no application. We have repeatedly held, and correctly we think, that the assignment of regular relief positions and of work on unassigned days is not a condition precedent to the staggering of work weeks. The meaning of the 40 Hour Work Week Agreement is quite the contrary; the Carrier may procure the performance of all necessary work that it can by the staggering of work weeks before the assignment of rest day work comes into the picture. It is clear therefore that the Carrier did not violate the Agreement under the facts and circumstances shown in the present case."

Award 7317 (Referee Carter) covered claim in which a relief employe was assigned to perform work in the freight house in addition to other duties. In denying claim made under the unassigned day rule, it was held:

"It is assigned work and Claimant has no right to it under Article VII, Section 1-e, Current Agreement. See Awards 5912, 5250, 5509, 6001, 6023, 6946. The Claimant, therefore, does not have a valid claim."

VI

In conclusion the Carrier submits that the facts cited show there is no basis for the claim. The Rate Clerk did not act as Chief Clerk on Saturday, and did not suspend work on his own assignment on Saturday. There was no violation of the rules and Carrier respectfully submits that the claim should be denied.

All data herein has been presented to representatives of the Employes in correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The instant claim was filed on the property by the Claimant on April 7, 1952, thirty months after the alleged violation on September 1, 1949. It was not submitted to the Third Division until October 2, 1957, five years after the filing of the claim. (It is conceded that the General Agreement of August 21, 1954, limiting the time in which an appeal can be taken is not applicable in this case.) The time for the institution of the submission of the claim to the Board was, by stipulation, finally limited to a period of ninety calendar days following the date of the Award filed in the

claim of Bill Clerk Charles Oliver which had been made on May 2, 1955: The Award in that claim is 8005 which passed on by the Board on July 2, 1957, and the claim is properly before the Board. There has been a lack of diligence, certainly, in processing this claim for which the Petitioner and the Carrier as well must accept some degree of responsibility.

It is the contention of the Claimant, herein, that the Carrier violated the Clerks' Agreement at Pine Bluff, Arkansas, when it required B. M. Johnson to suspend work on his regular six-day position on Saturday as a Rate Clerk and assume the duties of the Chief Clerk's position on each Saturday, effective September 1, 1949; though compensated at a Rate Clerk's pay Claimant Johnson performed fourteen specific duties which are identical duties performed by the Chief Clerk, R. Z. Hillis, Monday through Friday of each week. It is the Petitioner's further position that these fourteen duties were exclusively performed by the Chief Clerk from Monday through Friday.

To the contrary, the Carrier insists that the duties enumerated by the Claimant were simply miscellaneous duties performed by the Chief Clerk from Monday through Friday, but were not the basis for his rating as Chief Clerk; that the basis of the rating was the responsibility involved in the supervision of clerical employees and in handling correspondence; that the Claimant Johnson was not required to assume any such responsibility on Saturday; that there was nothing involved in the performance of these miscellaneous duties that could not be properly handled by the Rate Clerk at his own rating in addition to his regular duties and he was not required to suspend work on his own position Saturday.

Under the Agreement of March 19, 1944, a 40-hour week was established. Article II—Section 1(a) and (c) read as follows:

“(a) — General —

The carriers will establish, effective September 1, 1949, for all employes, subject to the exceptions contained in this Article II, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven;

* * * * *

“(c) — Six-day Positions —

Where the nature of the work is such that employes will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday."

In September 1949, under this Agreement, the position of Rate Clerk was properly assigned as a six-day position, as there was work for a Rate Clerk to perform on Saturday. There is nothing in the record to indicate that the Rate Clerk did not perform duties regularly assigned to him on Saturday. In addition to his regular work, he was required to perform some of the work ordinarily performed by the Chief Clerk from Monday through Friday. None of this work was of such a nature that it had to be performed exclusively by the Chief Clerk but could be by any other member of this craft. The Petitioner has supplied no convincing proof that the Rate Clerk had to assume supervisory duties of any consequence on Saturday.

The following language appearing in Award 6946 (Carter) is applicable to the instant case:

“... the establishing of the 40 hour week with two rest days in seven and the staggering of work weeks in accordance with the car-

riers' operational requirements are the two primary provisions of the 40 Hour Week Agreement, even though they are subject to other provisions of that agreement. It is plain that the right to stagger work weeks to meet carriers' operational requirements was of equal importance with the establishment of the 40 hour work week itself. We must conclude that the establishment of the 40 hour week without a reduction in weekly pay carried with it the idea that the carriers could eliminate certain unnecessary employes through the process of staggering work weeks. It was one of the compensating factors that was of advantage to the carriers when they agreed to the 40 hour work week with the same pay as the previous six day week. Award 5545.

"The next question that naturally follows is what positions might be staggered to accomplish the purposes of the agreement. It is clear, we think, that a position within the scope of one craft could not be staggered with a position under another craft when the work is the exclusive work of one. Two positions occupied by a signalman and a telegrapher, for instance, could not be staggered as craft lines are not wiped out by the 40 Hour Week Agreement. Neither could two employes in the same craft holding positions in different seniority districts be staggered under this agreement; nor may two positions in different classes be staggered where common seniority between the classes does not exist. But where classes are established within a craft for purposes other than the establishment of seniority rights, positions in the two classes may properly be staggered if each is qualified to perform the work of the other."

See also Award 7073 (Carter); Award 8136 (Elkouri).

It is significant that Award 8005 (Bailer) which occasioned the delay in processing this submission denied the claim of the Claimant Oliver. Though the facts involved there are not identical with those in the instant case, the principle is the same.

For the foregoing reasons the claim must 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 Employes involved in this dispute are respectively Carrier and Employes 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 there is no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1962.