

Award No. 10819
Docket No. CL-10574

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, in the office of Agent, Atlanta, Georgia, it failed, on the date of April 26, 1957, to afford preference to Mr. C. H. Lawson, Bill of Lading Rate Clerk, to perform work required on his position on that holiday.

(b) Mr. C. H. Lawson, Bill of Lading Rate Clerk, shall now be additionally paid eight hours at time and one-half the pro rata rate of his regularly assigned position of Bill of Lading Rate Clerk, \$17.43 per day.

EMPLOYEES' STATEMENT OF FACTS: 1. Claimant, Mr. C. H. Lawson, was regularly assigned to the position of Bill of Lading Rate Clerk, hours of assignment 9:00 A. M. to 6:00 P. M., work week beginning on Tuesday, Sunday and Monday being rest days. The rate of pay of Claimant Lawson's position was \$17.43 per day. A copy of Vacancy Bulletin advertising Claimant Lawson's position is attached hereto and identified as Employees' Exhibit "A".

2. Mr. F. E. Hamilton was regularly assigned to the position of Rate Clerk, hours 7:00 A. M. to 3:00 P. M. A copy of Vacancy Bulletin advertising Mr. Hamilton's position is attached hereto and identified as Employees' Exhibit "B". Mr. W. T. Richards was regularly assigned to position of Rate Clerk, hours 3:00 P. M. to 11:00 P. M. A copy of Vacancy Bulletin advertising Mr. Richards' position is attached hereto and identified as Employees' Exhibit "C".

3. By virtue of the "Note" under Rule 32, April 26 is a recognized holiday, for purposes of the Agreement, in Georgia. The Federal Government

worked from 7:00 A. M. to 3:00 P. M., W. T. Richards from 3:00 P. M. to 11:00 P. M., and G. P. Logan from 11:00 P. M. to 7:00 A. M. None of these clerks performed any duty that they do not normally or customarily perform during their regular five-day assignments. Carrier calls the Board's attention to the fact that Claimant Lawson's assigned hours are from 9:00 A. M. to 6:00 P. M. Therefore, it is always necessary that the first trick rate clerk, Mr. Hamilton, perform the very duties complained of from 7:00 A. M. to 9:00 A. M., which is the starting time of claimant's position. Also, it is always necessary that the second trick rate clerk, Mr. Richards, perform the very duties complained of from 6:00 P. M. to 11:00 P. M., while claimant is not on duty. This is evidenced by the fact that these duties are listed in the preponderating duties of the position occupied by Rate Clerks Hamilton and Richards. Such preponderating duties are quoted on page 3 of carrier's submission.

The only duty listed in the Local Chairman's letter of June 15, 1957, carrier's Exhibit "A-1", that is not specifically mentioned in the preponderating duties of the rate clerk positions occupied by Mr. Hamilton and Mr. Richards is "making switching orders." Even though such duty is not specifically listed, it is frequently performed by Rate Clerks Hamilton and Richards. Furthermore, there were only twelve such switching orders issued on the holiday in question, and the time consumed in the performance of that task was not more than twenty-five minutes for the **entire day**.

Claimant is subject to the provisions of Rule 46 (f) (1) of the agreement. Under this provision, the carrier has the unquestioned right to reduce the force of regularly assigned employees on designated holidays. There is nothing in the clerical agreement having the effect of requiring the carrier to work more employees on designated holidays than are needed to protect the work. As a matter of fact, Rule 46 (f) (1), together with the punitive pay provisions of Holiday Work Rule 32, and the eight-hour holiday allowance specified in Article II of the August 21, 1954 Agreement, were negotiated by the parties for the purpose of reducing to an absolute minimum the number of employees to be worked on holidays. As claimant was eligible for and received the eight-hour holiday allowance, he was compensated as though he had worked five days in his work week and the holiday had not occurred.

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 has been made known to employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between Grand Lodge Brotherhood of Railway and Steamship Clerks, and Southern Railway Company.

As of Friday, April 26, 1957, a designated holiday, and the date involved in this dispute, claimant Lawson was the regular occupant of the Bill of Lading Rate Clerk position. F. E. Hamilton was the regular occupant of the Rate Clerk position, hours 7:00 A. M. to 3:00 P. M. W. T. Richards was the regular occupant of the Rate Clerk position, hours 3:00 P. M. to 11:00 P. M.

The bulletins listing the preponderating duties of the positions are as follows:

The preponderating duties listed in the bulletin covering the bill of lading rate clerk position occupied by Claimant Lawson were as follows:

"Rating and billing all commodities accorded transit privileges. Handle shipments of cotton. Handle all papers necessary in connection with movement of export freight shipments. Sign bills of lading covering trap cars and solid car movements, giving necessary orders by teletype to yard and preparing switching orders when necessary. Take icing orders from yard and prepare waybill or Form 2470 as needed. Accomplish diversions and reconsignments and keep permanent file covering freight embargoes. Must be familiar with industrial locations both on the Southern Railway and connections. Clerk desiring to bid on this vacancy must be familiar with tariffs, supplements and reissues thereof, covering commodities granted transit privileges. Must have knowledge of Perishable Protective Tariff covering icing and reicing pertaining to diversions. The ability to operate typewriter and teletype machine is necessary. Bond is required."

The preponderating duties listed in the bulletin covering the rate clerk position occupied by Mr. F. E. Hamilton, Sr., who is also involved in this dispute, were as follows:

"Rating, routing and billing outbound carload and less carload freight shipments. **Sign bills of lading when necessary.** Handle diversions and reconsignments preparing necessary waybills by teletype to cover. Prepare return billing for empty equipment. Accomplish icing and reicing instructions preparing necessary waybills, or Form 2470, to cover. Handle stop-off cars furnishing stop-off consignee necessary certificates. Keep permanent file covering embargoes. File tariffs. **Transmit orders to yard office. Answer telephone,** and furnish patrons and other railroad departments information requested. Clerks desiring to bid on this position must have a thorough knowledge of rates and be able to apply them in accordance with tariffs in effect. **Ability to operate teletype machine** necessary. This is a bonded position." (Emphasis added.)

The preponderating duties listed in the bulletin covering the rate clerk position occupied by Mr. W. T. Richards, who is also involved in this dispute were as follows:

"Rating, routing and billing outbound carload and less carload freight shipments. Handle diversions and reconsignments preparing necessary waybills to cover. Prepare return billing for empty equipment. Accomplish icing and reicing instructions preparing necessary waybills, or Form 2470, to cover. Handle stop-off cars furnishing consignee certificates. Keep permanent file covering embargoes. **Sign bills of lading** tendered by the public after 6:00 P. M. and on Saturdays. Prepare waybills for carload transit shipments. File tariffs. **Transmit waybills and orders to yard office by teletype. Answer telephone and furnish** patrons and other railroad departments information requested. Clerks desiring to bid on this assignment must have a thorough knowledge of rates and be able to apply them

in accordance with tariffs in effect. **Ability to operate teletype machine is necessary.** This is a bonded position." (Emphasis added.)

The Carrier determined that because of the holiday and some of the plants of Carrier's large shippers being closed, that it would not be necessary to work the entire clerical force in the rate department. Claimant Lawson's position, along with some others, were blanked and they were allowed a day's pay at the pro rata rate of their respective positions.

Clerks Hamilton and Richards were required to work and Claimant contends that the duties of his position were required to be performed by clerks Hamilton and Richards.

The specific duties complained of are: signing of Bills of Lading, taking orders over the telephone, making switching orders and the transmitting of all city orders to Inman Yard office by teletype.

The Carrier contends that these duties are included in the bulletin of the positions of Hamilton and Richards. They further contend that Hamilton and Richards perform all of these duties when Claimant is not on duty and also perform some of them when he is on duty, but otherwise occupied.

The issue becomes whether the Carrier is filling the position.

We are of opinion that Award 8872 is in point and we concur therewith. There is no evidence contained in this record to show that any of the called employees performed work which they were not entitled to perform as part of their regular assignment. We believe that this may be distinguished from Award 8563. Apparently it was held therein that the duties belonged exclusively to the Claimant. For the foregoing reasons we find that the Agreement was not violated.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1962.