

Award No. 11018

Docket No. CL-10106

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated the Clerks' current Agreement by assigning Mr. Max C. Murphy and his successor, Mr. L. D. Ball, Jonesboro, Arkansas, Sunday and Monday rest days since April 10, 1950.

(2) That Mr. Murphy be reimbursed at punitive rate of pay for each Saturday he has worked since April 10, 1950, through May 28, 1952, and that he be reimbursed at pro rata rate of pay for each Monday from April 10, 1950, through May 28, 1952, when he was not permitted to protect his assignment.

(3) That Mr. Ball be reimbursed at punitive rate of pay for each Saturday he has worked since May 28, 1952, until violation ceases*, and that he be reimbursed at pro rata rate of pay for each Monday since May 28, 1952, until violation ceases*, when he was not permitted to protect his assignment.

EMPLOYEES' STATEMENT OF FACTS: Mr. Max C. Murphy was regularly assigned to the position of Claim Clerk, Tuesday through Saturday, rest days Sunday and Monday. No one is assigned to relieve on the rest days, nor is the work of the position performed by an unassigned employe on the rest days, therefore, Carrier considers the position as one on which work is required only five days each week. Mr. L. D. Ball displaced Mr. Murphy from the position of Claim Clerk on May 28, 1952.

Claim was filed by Division Chairman C. F. Hill of St. Louis, with Mr. J. L. Humphreys, Superintendent, Pine Bluff, Arkansas, on July 12,

* Carrier advised the assignment was changed effective May 4, 1953, from Tuesday through Saturday to Monday through Friday which terminated the rule violation.

cause we do not see how the above-mentioned rules can be construed to prescribe such action implicitly, we hold that the employes claim in this case cannot be sustained."

Award 6023 (Referee Parker) held that work of a Bill Clerk could be assigned on his rest day to a Ticket Clerk assigned to work on that day. The Opinion, in part, was:

"* * * since the existing facts clearly show the Saturday work in question was clerical work of such nature it could properly be assigned to and performed by any clerk within the same seniority group and district, it had the right to assign such work to the involved Ticket Clerk position."

Award 7317 (Referee Carter) denied a claim that work assigned to a relief employe in addition to work of employe he was relieving was work on an unassigned day. The Opinion held, in part:

"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."

Award 8005 (Referee Bailer) denied a claim on this property that it was improper to assign billing to a Platform Foreman on rest day of Bill Clerk. The Opinion held, in part:

"* * * the work in dispute was properly made a part of the Platform Foreman's assignment on Sundays. We do not think the Carrier was required to call an extra clerk or the claimant, or otherwise to establish a regular relief position to perform this work."

In the present case the Claim Clerk and the Bill Clerk are in the same seniority district. Both are assigned to do billing. Clearly the Carrier was within its rights in assigning the Claim Clerk Tuesday through Saturday and in assigning to the Rate Clerk on Monday such duties performed by the Claim Clerk on other days as are required on Monday. Consequently the Claim Clerk was not entitled to time and one-half rate for the time worked on Saturday; nor was he entitled to work on Monday, which was properly designated as one of his rest days.

The Carrier respectfully submits that the claim is not supported by the rules, and 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: Six-day operation, from Monday through Saturday, was maintained at the Jonesboro, Arkansas Freight Station prior to September 1, 1949, the effective date of the 40-Hour Week Agreement.

Effective September 1, 1949, the Rate Clerk, rate \$12.60 per day, was assigned Monday through Friday, Saturday and Sunday off. On

Mondays he performed the freight billing that would have otherwise been performed by the Claim Clerk, rate \$12.31 per day, who was assigned Tuesday through Saturday, Sunday and Monday off. Both were assigned to bill freight and were in the same seniority district and group. Carrier claims, without refutation, that these rest days continued in effect until May 4, 1953, when the S.W.T. discontinued Saturday operation in the warehouse, and the Claim Clerk was assigned rest days of Saturday and Sunday.

Award 8005 denied a similar dispute by holding that an employee on a regular work day may perform the duties of another employee on the latter's rest day. This, of course, is true only where the employees are in the same seniority district and group or class.

The Employees have offered no proof that the work at this location could reasonably be met in five days, resulting in a violation of Rule 27-3(b). Having failed to prove their claim as provided in Rule 27-3(f), the Board has no alternative than to hold that Carrier could stagger its forces to meet its operational requirements as provided in Rule 27-3(a), and that this claim must be denied. Award 5555.

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 11th day of January, 1963.